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# Reform of Procedure about Civil Remedies for Victims of Slander on the Internet in Japan

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# Reform of Procedure about Civil Remedies for Victims of Slander on the Internet in Japan

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Abstract

In recent years, suicides caused by slander on the Internet have become a major social problem in Japan. However, the procedure for disclosure of sender's information, which is used to prepare for filing a lawsuit claiming damages against the wrongdoer, had problems regarding the structure of the procedure and the subject of disclosure. Therefore, the Act on Limitation of Liability of Providers was amended in 2021. This paper provides an overview of this amendment.

*Keywords: Slander on the Internet, Civil Litigation, Sender's Information Disclosure, Alternative Dispute Resolution*

## 1. Introduction

It is a well-known fact that the anonymity of the Internet has facilitated the free expression of opinions on various issues because the speaker cannot be identified, and this has contributed to the creation of many innovations. However, just as there is light and shade in everything, it is also true that this anonymity has its negative side. One problem that arises from the negative aspect of anonymity is the problem of slander on the Internet. For example, there are replies to information sent out through SNS that are ridiculous without any reason or comments presumably aimed at harassment.

Of course, those who send out information do so with the expectation of reactions from recipients, and to some extent, they may anticipate a negative response. In addition, criticism made with reasonable grounds may be painful for the original poster. However, it is an essential element for stimulating discussion and improving things.

By contrast, completely unfounded criticism, accusations that only aim to cause psychological damage to others, and accusations that cause negative feelings in others are merely harmful. They will never contribute to moving things in the right direction. This behavior is an abuse of the anonymity of the Internet.

What I have described above is probably obvious to most people. Unfortunately, however, slander on the Internet, which exploits this anonymity, is currently raging like a monster. With the recent development of social networking services and the widespread use of smartphones, this trend is growing as more and more people are sending out information.

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One example is that there have been incidents in which information providers exposed to slander have become mentally trapped and eventually committed suicide.[1] This situation no longer allows us to excuse the issue as a prank or joke. If legal interests have been violated, remedies must be provided to the victim or their heirs, regardless of whether the victim has committed suicide.[2] In this regard, it is obvious that the victim can demand in court for the operator of the Internet site that published the slanderous article to delete it. However, there is still a possibility that the real perpetrator, the one who posted the article, will repeat the perpetration.[3] Therefore, we need a mechanism to hold the sender directly accountable. In this regard, Article 710 of the Japanese Civil Code provides for the right to claim damages for mental anguish. In other words, victims of slander on the Internet can exercise their right to claim damages against the sender, the perpetrator. Of course, this right can be exercised outside of court, but it is unlikely that the perpetrator will voluntarily agree to fulfill the obligation of compensation. As a result, the victim has virtually no other choice but to exercise this right through the courts. This is where the anonymity of the Internet is a major obstacle to the exercise of victims' rights. In other words, in Japan, when enforcing rights through litigation, it is necessary, in principle, to identify the obligor who is the other party. This is because if the duty bearers are not identified, it is not clear who must obey the judicial decisions made by the court, and the effectiveness of the judicial decisions cannot be ensured. Therefore, if the name and address of the other party is not clearly stated in the document submitted to the court at the start of the proceedings, the document will not be accepted. Hence, not knowing who the other party is, results in denying the victim access to the court.

Leaving such a situation unresolved will unfairly force victims to endure damages and lead to the hollowing out of the content of their rights. This situation could lead to a collapse of social order, stagnation of technological innovation, and be an impediment to economic development. Therefore, in 2001, Japan enacted the Law Concerning Limitation of Liability for Damages of Internet Service Providers and Disclosure of Information on the Sender (LLPDIS).[4] As the name implies, this law limits the liability of Internet service providers for damages and provides the right for those who have suffered an infringement of their rights to request the Internet service provider to disclose information about the sender, provided that specific requirements are fulfilled. This allows the victim to collect the information necessary to identify the sender.

However, this law also aims to protect Internet service providers as an industry by reducing the procedural burden on Internet service providers,[5] although it is criticized for not being easy for victims to use. The law was amended in April 2022 in response to growing public criticism of the frequent incidents of suicide and other serious consequences caused by Internet slander and inadequate access to remedies.[6]

## 2. Summary of procedures to date

### 2.1. Structure of civil proceedings in Japan

As a prerequisite for explaining the procedures for redressing slander on the Internet, let me first outline the civil justice system in Japan. Japan's modern civil procedure system was introduced in 1890 with the enactment of the Code of Civil Procedure, modeled on the German Uniform Code of Civil Procedure of 1877. However, delays in litigation became a problem, and a reform was made in 1926 with

reference to the Austrian Code of Civil Procedure. Later, in 1946, a partial revision was made under the influence of American law. Then, the provisions on compulsory enforcement and provisional measures, set forth in the Code of Civil Procedure, were separated and enacted as a single law. In addition, in 1996, there was a complete reform of the Code of Civil Procedure based on Japanese practice.[7] Thus, the Japanese civil litigation system is based on continental law, especially German law, with partial modifications from American law, and then merged and reconstructed as Japanese practice.

In such civil litigation practice in Japan, the subject of the trial is the existence or non-existence of rights or legal relations as defined by substantive laws such as the Civil Code.[8] Therefore, if the subject rights are different, the cases will be handled as different cases by different judges.[9] In addition, as will be discussed later, lawsuits requesting disclosure of information about the sender will be brought, at least, against both the operator of the Internet site where the article was posted, that is, the content provider, and the access provider. Therefore, if the opposing party is thoroughly contested, the plaintiff must obtain at least six court judgments.[10]

In addition, it is generally accepted that major Internet service providers rarely keep access logs for long periods. Typically, records are removed within 3 to 6 months.[11] Therefore, if victims were to wait for a court decision to order the disclosure of information about the sender, the way to remedy their rights might be closed.[12] Hence, there is a need to use provisional measures, especially a procedure to establish a provisional status (*Kari no chii wo sadameru karisyobun*), to obtain disclosure of the sender's information to prepare for subsequent litigation.[13]

Thus, to obtain civil remedies for victims of Internet slander, it is necessary to use a long and complicated procedure involving several steps.[14] This is why the law was reformed to make the process simpler and faster.

### 2.2. Procedures for requesting disclosure of information about the sender before the reform

#### 2.2.1 Pathways of information on the Internet

Articles posted on Internet websites are sent from the computer terminal used by the sender to the access provider with which the sender has a contract. Furthermore, the article information sent to this access provider is sent to the person who controls the website, the content provider. This allows the content provider's server to save the submitted article and make it available for viewing. When this happens, the date and time when the provider received the article data and the IP address of the computer terminal from which it was sent will be saved by each provider as an access log.[15]

Thus, the first step is to ask the content provider of the site where the slanderous article is posted to disclose the IP address and timestamp of the article. Then, based on the disclosed information, the victim will ask the access provider to disclose information about the sender. Access providers usually have information about the name and address of the sender, who is their customer, and information about IP addresses and timestamps related to articles. By cross-checking the information obtained by the victim through these procedures, the address and name of the person who sent the article in question on the date and time it was sent can be determined.[16] Finally, it will be possible to claim damages against the

sender.

2.2.2 Requirements for exercising the right to request disclosure of information about the sender

Article 4 of the pre-reform LLPDIS stipulates that a victim whose rights have been violated by the distribution of information on the Internet may request the Internet service provider to disclose the sender's information only if certain requirements are fulfilled. By exercising this right, the victim can collect the information necessary to identify the sender.

For disclosure to be permitted under this right, it must be clear that the claimant's rights have been violated (Article 4, Item 1 of the pre-reform LLPDIS) and that there is a reasonable ground to permit disclosure; for example, that it is necessary to exercise the right to claim damages (Article 4, Item 2 of the pre-reform LLPDIS).[17,18]

2.2.3 Information to be disclosed

According to the order of the Ministry of Internal Affairs and Communications, the sender information to be disclosed includes: i) the name of the sender and other persons involved in the transmission of the right-infringing information, ii) the address of those persons, iii) the telephone number of the sender, iv) the e-mail address of the sender, v) the IP address of the infringing information, vi) the port number, vii) the Internet connection service user identification code of the infringing information from the mobile phone terminal, viii) the SIM card identification number of the infringing information transmitted by the Internet connection service from the mobile phone terminal, etc., and ix) the time stamp for the infringing information involved in (vi) through (viii).[19]

2.2.4 Use of provisional measures

Since the disclosure of the sender's information includes information related to the privacy of the sender, it should be done through a judgment procedure where the involvement of the parties in the procedure is guaranteed by strict adversarial arguments.[20] In this regard, there was a view that disclosure through a simplified provisional measure was not appropriate because of the sensitive issue of disclosure of privacy-related information.[21] For this reason, the legislator was initially of the opinion that a measure prohibiting the erasure of information should be required, rather than a provisional measure requiring the disclosure of sender information.[22]

However, as mentioned above, a step-by-step procedure that deals with multiple providers is required to identify the sender. Therefore, in cases where it takes a considerable amount of time for a victim to obtain information on the sender's name and address, which is necessary for filing a lawsuit, it is necessary to use simpler and faster measures to ensure the effectiveness of dispute resolution. Even if it is possible to obtain disclosure of information on the sender from the content provider who manages the website on which the slanderous article was posted, it is often impossible to identify the sender with that information alone.[23] Therefore, asking the access provider to disclose the sender's information after prohibiting the access provider from erasing the information, based on the disclosure of the sender's information by the content provider in a lawsuit, would place too heavy a burden on the victim.[24] For the aforementioned reasons, it is necessary to reduce the burden to the stage of disclosure of information

regarding the sender through the judgment process by allowing victims to take provisional measures that allow them to obtain disclosure of information from any provider directly.[25] Therefore, to provide relief to victims, Japanese judicial practice allows the use of provisional measures to prohibit providers from erasing sender information and order providers to disclose sender information to victims, as well as provisional measures to order the removal of the slanderous articles themselves.[26]

This provisional measure for disclosing sender information is the subject of a procedure called "provisional measures to establish a provisional status (*Kari no chii wo sadameru karisyobun*)" in Japan. A petition for this procedure may be filed when an action for disclosure of the sender's information may be filed in a Japanese court (Article 11 of the Law Concerning Provisional Measures in Civil Cases). Therefore, I will now examine what kind of jurisdiction can be granted to a Japanese court if it has jurisdiction over a lawsuit to disclose information about the sender.

First, jurisdiction is granted to the court that has jurisdiction over the defendant's domicile or location (Article 4, Paragraph 1 of the Code of Civil Procedure), which is allowed in any lawsuit.[27]

In addition, based on the understanding that the essence of disclosure of information regarding the sender is the issue of tort, it is understood that special jurisdiction (Article 5, Paragraph 1, Item 8 of the Code of Civil Procedure) regarding the place[28] where the tort was committed can be allowed as parallel jurisdiction.[29]

If the Internet service provider is a foreign company, jurisdiction under Article 3, Paragraph 3, item 4 of the Code of Civil Procedure is allowed if the Japanese branch of the foreign company exists as a Japanese company, has an office or place of business in Japan, and conducts a website management business there.[30] Even if there is no principal place of business or office in Japan, if there is a representative or other person in charge of the principal business in Japan, the place of residence of the representative or other person in charge of the principal business in Japan will have jurisdiction (Article 4, Paragraph 5 of the Code of Civil Procedure). If the description on the website of the concerned foreign corporation is made in Japanese and the website can be accessed from Japan, Japan will be granted international jurisdiction under Article 3-3, Paragraph 5 of the Civil Procedure Law as an action "relating to business in Japan" against "a person conducting business in Japan."[31]

In the case of a foreign company that cannot be recognized as having its principal office or place of business in Japan and has no representative or other person in charge of its principal business in Japan, the Tokyo District Court will be the court of jurisdiction (Article 6-3 of the Rules of Civil Procedure) as the case where jurisdiction cannot be determined (Article 10-2 of the Code of Civil Procedure).[32]

To file a petition for provisional measures, the petitioner must, in principle, identify the other party (*see* Articles 1 and 13 of the Rules Concerning Provisional Maintenance Measures in Civil Cases, Article 2, Paragraph 1, Item 2 of the Rules of Civil Procedure, and Article 25-2 of the Law Concerning Provisional Maintenance Measures in Civil Cases).

This process means that the complainant needs to identify the access provider and the content provider. However, for example, the name of the website manager where the article is posted may not be displayed, or it may not be clear who the manager is. In addition, even if the complainant knows who the manager is, it may not be clear where the documents should be served because they do not know the address.[33]

In such a case, for domain names in Japan (JP domain name), the complainant can use “WHOIS”, a service provided by Japan Registry Services Inc., to provide information on Internet domain name registrants. This service makes it possible to look up an IP address from a domain name, or information about the registrant of a domain name from a domain name or IP address. The Japan Network Information Center provides a similar service. Furthermore, it is possible to search for domain names outside Japan using InterNIC's "WHOIS" service. However, it is important to note that the registrant of a domain name and the manager of a website do not always equate.[34]

In general, hearings on provisional measures are closed to the public and are conducted based on written submissions. However, regarding the procedure for provisional measures to establish provisional status, in principle, it is necessary to go through “a date of oral argument or for an atypical hearing (*Shinjin*) on which the opponent can be present” (main clause of Article 23, Paragraph 4 of the Law Concerning Provisional Measures in Civil Cases). Therefore, the court shall summon the opposing party, if it is a Japanese company, to appear on these dates. This call is to be made by “reasonable means” (Article 3, Paragraph 1 of Law Concerning Provisional Measures in Civil Cases), which in Japan means by telephone, facsimile, mail, or e-mail. However, in the case of a summons to a foreign company, if the foreign company is located in a state that is a party to the Convention on the Service and Notification of Judicial and Extrajudicial Documents in Civil or Commercial Matters Abroad and has not declared its refusal with respect to Article 10(a) of the Convention, or in a state that is not a party to the Convention but is a party to the Convention on Civil Procedure and has not confirmed its refusal with respect to Article 6, Paragraph 1 Item of 1 of the Convention, the person may be summoned by direct service of mail.[35] In addition, if it can be presumed that the opponent is likely to interfere with the implementation of the enforcement procedure by calling a date for the hearing, or if the situation is so urgent that implementing a date for hearing the opponent's opinion would impair the effectiveness of the order to implement provisional measures, a provisional measures order may be issued without hearing the opponent's opinion (proviso to Article 23, Paragraph 4 of the Law Concerning Provisional Measures in Civil Cases).[36]

At the hearing, the court is required to prove the two requirements for issuance: the existence of the right to be maintained and the necessity of maintaining the right (Article 13 of the Law Concerning Provisional Measures in Civil Cases). The proof in this provisional measure is specifically called *Somei*, which is a prima facie case and is treated differently from the ordinary proof, called *Syomei*.[37] As mentioned above, the right to be protected in the provisional measures to request disclosure of information on the sender is formally the right to request disclosure of information on the sender (Article 4 of the LLPDIS before the reform). However, I believe that the right to claim damages based on a tort is substantive, and the violation of the right to honor and the right to privacy as the content of

the tort will be a concern.[38] As for the necessity of maintenance, there is a high possibility that Internet service providers' access logs will be deleted after a short period, thus closing the way for rights remedy. Therefore, the necessity of maintenance is often affirmed, except in cases where other means can be used to obtain the information.[39]

The enforcement of a provisional measure that orders the disclosure of information on the sender that has been issued is carried out in the same manner as a provisional seizure or compulsory enforcement (Article 52, Paragraph 2 of the Law Concerning Provisional Measures in Civil Cases), except as explicitly provided otherwise. Since disclosing the sender's information means ordering an act that cannot be replaced by another person, domestic enforcement is carried out by threatening the sender with a fine to make them perform the act voluntarily (Article 172 of the Civil Enforcement Law).

On the other hand, it is extremely difficult to enforce against a foreign company. This is because there is no international mechanism for recognizing and enforcing provisional measures ordered by foreign courts. For this reason, it is accepted that one can only expect voluntary cooperation from foreign companies.[40]

## 3. Overview of the reformed parts

### 3.1 Summary

In the legislative process, the following issues were raised for consideration: i) expansion of the scope of disclosure of sender information, ii) establishment of new judicial procedures, iii) handling of the maintenance of logs, iv) issues regarding the disclosure of sender information to overseas service providers, and v) promotion of out-of-court disclosure.41 Of these, promotion of out-of-court disclosure should be improved in practice, and discussions have focused on creating new procedures in ii).[42] Then, in February 2021, a reform bill was submitted to the Diet, which was passed and enacted on April 21, 2021.

Again, the centerpiece of the reform is the creation of a new procedure for requesting disclosure of information about the sender. This procedure consists of i) an order for the access provider and the content provider to disclose information about the sender (Article 8 of the reformed LLPDIS); ii) an order for the content provider to provide the victim with the name and address of the access provider, and for the access provider to provide the information held by the content provider (Article 15 of the reformed LPDIS); and iii) an order prohibiting the access provider from erasing information on the sender (Article 16 of the reformed LPDIS), all in a single procedure.[43] This new model reduces the burden of multi-step procedures. However, the new procedure does not replace the traditional court proceedings because the legal structure of the victim's right to request disclosure of the sender's information is maintained. Therefore, a person seeking disclosure may use the judgment procedure as before, or they may use the new procedure. This new procedure is a system in which the aforementioned multiple orders are issued sequentially and quickly in a single procedure. The legal nature of the procedure is not litigation, but a procedure called "*Hisyo*"[44] in Japanese, and "*Freiwillige Gerichtsbarkeit*" in German.[45] Note that this procedure does not cover the removal of slanderous articles. Therefore, for the removal of the articles, provisional measures and lawsuits will be used as before. These procedures are explained separately in

the following sections.

3.2 Order requiring disclosure of information about the sender

This order procedure is just a change in the nature of the existing procedure to a *Hisyo* procedure. Therefore, the requirements for exercising the right to request disclosure of the sender's information, the content of the request, and the effect, remain almost the same. Thus, the hearing is conducted based on the documents submitted and, if necessary, utilizing a teleconference system. Nevertheless, if the court orders disclosure, it must set up an opportunity to hear the parties' statements (Article 11, Paragraph 3 of the reformed LLPDIS). In cases where provisional measures were used, provisional measures were often taken without hearing the parties' opinions as an exception, on the grounds that an urgent need existed. However, if this new procedure is to be used in future, the court will have to set a date for the statements of opinion. There is a concern that this will slow down the process. It is also assumed that the level of proof will be similar to that in the judgment procedure, unlike the provisional measures. These are to ensure the opportunity for the parties to assert their interests and to make a careful decision, as the decision to order disclosure will be given res judicata effect, as described below.

Generally, the court will send a copy of the written request for disclosure of information about the sender to the other party (Article 11 Paragraph 1 of the reformed LLPDIS). This is done to reduce the burden of having to go through complicated procedures based on treaties when dealing with foreign providers.[47] However, documents other than the petition must be sent by the party directly to the other party. An Internet service provider who is asked to disclose information must ask the sender their opinion on whether the information should be disclosed or not, and if the sender has a negative opinion on the disclosure, they must also be asked why (Article 6 Paragraph 1 of the reformed LLPDIS). This is to prevent the Internet service provider from agreeing to the disclosure of information without paying attention by informing the Internet service provider of the sender's opinion.[48]

An appeal of objection may be filed against a decision ordering disclosure of information about the sender (Article 14 Paragraph 4 of the LLPDIS as amended). This appeal is an ordinary judgment procedure.[49] As such, an adversarial hearing is held in an open court and is handled by making a judgment. If, as a result of this appeal procedure, a judgment is rendered ordering the disclosure of information on the sender, enforcement may be carried out based on that.

If no appeal is filed against these, or if the appeal is dismissed, the order to disclose information about the sender is given the same effect as a final and binding judgment (Article 14 Paragraph 5 of the reformed LLPDIS). Thus, even though the case is not a judgment, it will be given a res judicata effect and a basis for enforcement.

A petition for disclosure of the sender's information may be withdrawn until the court's judgment is finalized (Article 13 Paragraph 1 of the reformed LLPDIS).[50] However, since it would be unfair to deprive the other party of the opportunity to obtain a court decision in its favor, the consent of the other party to such withdrawal is required if the petitioner seeks to withdraw after a decision has been rendered on the petition or an order to provide information has been issued.

3.3. Order to make the information held by the Internet service provider available

This order procedure will be handled at the same time by the court in charge of the case requesting disclosure of information on the sender.[51] Normally, the parties would simultaneously file a petition with the court for disclosure of information about the sender and for the provision of information in their possession. The court may order the information to be provided if the victim is being prevented from identifying the source of the information that violates their rights (Article 15 Paragraph 1 of the reformed PPLR). The content of the order is that if the access provider can be identified from the information held by the content provider, the name and address of the access provider shall be provided to the complainant, who is the victim. In contrast, if the content provider does not have the information, or if the access provider cannot be identified from the information in the content provider's possession only, the circumstances will be provided to the complainant. This information may be provided by writing or electronic means.

In addition, if the victim files a complaint with the access provider requesting disclosure of information about the sender based on the information disclosed by the content provider, the victim shall notify the content provider of the fact that the complaint has been filed. Upon receipt of this notice, the content provider shall provide the access provider with the information about the sender in its possession, the disclosure of which is being requested.[52] In response, the access provider will identify the sender who is the subject of the disclosure.

Against an order to provide this information, the content provider can file a simple and expeditious appeal called *Sokuji kokoku* (Article 15 Paragraph 5 of the reformed LLPDIS). Since the provision of information by the content provider is not a right of the victim but a procedural measure, a simple appeal is considered sufficient.

The order to make the information available ceases to be effective if the case demanding the disclosure of information about the sender is closed as a whole or if the victim fails to notify the access provider within two months of receiving the information. This measure is to prevent the complainant from using the information provided for any purpose other than the disclosure of the sender's information.

3.4. Order prohibiting the erasure of information about the sender.

The complainant may request an order prohibiting the erasure of the sender's information against a content provider or access provider who is required to disclose information about the sender. This order, like the order to compel the provision of information, is issued when necessary, to prevent the identification of the sender that violates the rights of the victim (Article 16 Paragraph 1 of the reformed LLPDIS). The erasure of information is prohibited until the entire case requesting the disclosure of information about the sender has been completed. In this case, too, the provider may file a simple and expeditious appeal called *Sokuji kokoku* (Article 16, paragraph 5 of the reformed LLPDIS).

3.5 Actual operations

Here, I will discuss the actual operations of this procedure. First, the victim simultaneously files a petition requesting the content provider to disclose and provide information about the sender. The

complainant also files a petition for the erasure of the information. After the court allows the disclosure and provision of information about the sender and the information is provided to the victim, the victim will add the access provider as an opponent and request the disclosure of information about the sender and prohibition of erasure.[53] Once the access provider provides the name and address of the sender, the victim can finally file a lawsuit against the sender for damages.

When the disclosure of information about the sender is allowed, it is the practice that the cost of the procedure is to be paid by the sender, not by each provider. This is in consideration of the fact that each provider is only a formal party in the system, and the substantive other party is the sender.

3.6. Judicial jurisdiction

3.6.1 International jurisdiction.

If the Internet Service Provider is a foreign company, international jurisdiction will be determined in accordance with the provisions of the Code of Civil Procedure, as mentioned above. However, since the law was reformed to make it a *Hisyo* procedure, a similar provision was made in the LLPDIS to clarify the rules regarding jurisdiction.[54] In addition, the existence of an agreement on international jurisdiction, which confers jurisdiction only on a foreign court,[55] cannot be asserted if that court is legally or factually unable to exercise jurisdiction (Article 9, paragraph 5 of the reformed LLPDIS).[56]

3.6.2 Domestic jurisdiction

Domestic jurisdiction is also provided for in the same manner as the jurisdictional provisions of the Code of Civil Procedure (Article 10 of the reformed LLPDIS). In addition, the Tokyo District Court has jurisdiction over cases arising within the jurisdiction of the Tokyo High Court, the Nagoya High Court, the Sendai High Court, and the Sapporo High Court in competing with the original jurisdiction. The Osaka High Court, the Hiroshima High Court, the Fukuoka High Court, and the Takamatsu High Court have jurisdiction over cases arising within their jurisdiction. (Article 10 Paragraph 3 of the reformed LLPDIS). This is in consideration of the fact that the Tokyo District Court and the Osaka District Court are staffed by a relatively large number of judges who are familiar with cases concerning the disclosure of the sender's information.

Furthermore, in cases where disclosure of the sender's information is required in connection with a claim for damages for violation of a patent right or program copyright, only the Tokyo District Court will have jurisdiction over cases arising within the jurisdiction of the Tokyo High Court, Nagoya High Court, Sendai High Court, and Sapporo High Court, if the case arises within the jurisdiction of the Osaka High Court, Hiroshima High Court, Fukuoka High Court, and Takamatsu High Court, only the Osaka District Court will have jurisdiction (Article 10, Paragraph 5 of the reformed LLPDIS). This is due to the fact that judges with expertise in intellectual property rights are gathered in these two courts as a matter of policy

3.6.3 Dealing with so-called login types

Japan’s system for requesting disclosure of information about the sender has targeted cases where articles violating rights were posted on electronic bulletin boards. However, recently, so-called login-type services, in which users can post articles by setting up an ID and password, registering an account, and

logging in to that account, have become widespread.[57] In this login-type service, the provider generally does not have the sender 's information at the time of posting the article, although it has the IP address and time stamp at the time of login. Therefore, before the reform, there was a debate as to whether the sender's information at the time of login was subject to disclosure, or whether the access provider who mediated the information on the sender at the time of login was not involved in the distribution of the infringing information and therefore could not request disclosure from this person.[58] Hence, information about the sender at the time of login and other codes that are necessary to identify the sender were defined as infringement-related communications (Article 5, Paragraph 1, Item 3 of the reformed LLPDIS), and a new provision was created to allow their disclosure.[59]

First, it was stipulated that the access provider who mediated the information about the sender at the time of login is subject to a request for disclosure as the Internet service provider who conducted the relevant telecommunications (Article 5 Paragraph 2 after the reform).

Next, limited disclosure of information on the sender at the time of login and at the time of logout was allowed, since such information is not directly related to the article violating the right. Therefore, regarding the requirements for exercising rights, new requirements were added to those set forth in Article 5, items 1 and 2 of the reformed LLPDIS.

Specifically, one of the following three cases must be applicable. First, the content provider is deemed not to possess any information other than the information about the sender related to the infringement-related communication (Article 5 Paragraph 1 Item 3(*i*) of the reformed KKPR). This is the case, for example, when the content provider has no information other than the IP address and time stamp used at the time of login and logout.[60]

Second, when the only information about the sender, other than information about infringement-related communications held by the provider, is information about the sender other than the sender's name and address or information that can be used to identify other providers and is specified by the Ordinance of the Ministry of Internal Affairs and Communications[61] (Article 5 Paragraph 1 Item 3(*ro*) of the reformed KKPR).This means that the provider may not have only the name and address of the sender or information about another Internet service provider through which the sender has passed.[62]

Third, it is a case where the sender of the infringing posting cannot be identified only by the information on the sender other than the infringement-related communication (Article 5 Paragraph 1 Item 3(*ha*) of the reformed KKPR). This is a case where, for example, it is found that there is a part of an old article that violates rights, but the IP address, etc., at the time of posting the article has already been deleted.

If any of the above three requirements are fulfilled, the disclosure of information on IP addresses and time stamps at the time of login and logout can be requested.[63]

(8) Promote voluntary disclosure outside the court

Again, the right to request disclosure of information about the sender is a right provided by substantive law. Therefore, the victim, who is the right holder, can exercise this right without going to court. In addition, sender information is considered to be subject to the secrecy of communication guaranteed by the second sentence of Article 21, paragraph 2 of the Constitution (Article 4, paragraph 1 of the Telecommunications Carriers Act), and disclosure of such information without a reasonable ground will result in punishment. However, if the information is disclosed in response to the use of the system for requesting disclosure of sender information, it will be considered a reasonable ground.

However , the interpretation of the requirement of "obviousness of infringement of rights," which is one of the requirements for exercising rights, especially concerning slander on the Internet is problematic., This situation makes it even more difficult for Internet service providers to make decisions on whether or not it is a lawful exercise of rights.[64] Therefore, in April 2021, the Safer Internet Association established the "Guidelines on the Clarity of Violation of Rights"[65] and opened a consultation service to address this issue.

According to this guideline, there is a lack of public interest, which is a factor in determining violations of rights related to slander. It is clear that there is a lack of public interest when the postings are about the conduct of ordinary private citizens in their daily lives. As for the lack of purposes of public interest, if the information that violates the rights clearly states that it is for purposes other than public interest, such as harassment, revenge, or personal attack, and if there are no circumstances in the context that lead to the presumption that it is for purposes of public interest, then it is clearly lacking in public interest.[66] Furthermore, when the same person repeatedly and persistently makes expressions that deny the existence of the person to ordinary private citizens, it exceeds the limit of what is permitted under socially accepted norms and is considered to be a clear violation of honor and sentiment in terms of type.[67] These guidelines are intended to make it easier for Internet service providers to evaluate violations of their rights.[68] In response to this guideline, it has been pointed out that this wording only applies to limited cases of violation of rights. A more drastic reform of Article 5, Paragraph 1 of the LLPDIS after the reform will be necessary.

4. Prospects

The purpose of this reform should have been to develop more accessible and effective procedures to help victims of slander on the Internet. It is commendable that the creation of the new procedures has increased the options available to victims. However, this should not make the procedures more complicated[69] and ultimately confusing for users. In this context, we should continue to explore the development of ADR[70] to develop simpler and more accessible procedures.

Legislators also seem to focus on protecting Internet service providers from the abuse of their claims. Certainly, this is necessary to protect the confidentiality of communications. However, considering the social power relationship, it seems that more emphasis should be placed on the remedy for the victims rather than the Internet service providers who are primarily large corporations.[71] From this perspective, further reform[72] of the requirements for exercising the right seems necessary.

Furthermore, it is also problematic that important aspects such as the information subject to disclosure and provision are left to the Ordinance by the Ministry of Internal Affairs and Communications. The purpose of delegating detailed regulations to a ministerial ordinance that can flexibly deal with the issues is understandable, compared to law reforms that require parliamentary approval, because of the rapid technological development of the issues surrounding the Internet.[73] Nevertheless, more than four months after[74] the enactment of the law, the ministerial ordinance has yet to be clarified. This may be a deliberate delay in reflecting the level of technology at the time of implementation as much as possible. However, if the contents of the system are not clarified, it will be difficult to understand the system and take countermeasures. Even if timely reforms are to be made in the future, it seems that the system's black box should be eliminated first.

References

1 In Japan, in 2020, a shocking incident occurred in which the behavior of one of the actors in a TV reality show was repeatedly slandered on social networking sites, resulting in the suicide of the actress. This incident was one of the factors that had a major impact on the reform of the law. For the history of this law revision, including this point, please refer to *Masahiro Sogabe, Hasshinsya joho kaiji no arikata ni kansuru kenkyukai to kongo no kadai ni tuite* [Study group on how to disclose information about the sender and its future issues] LIBRA Vo. 2[1] No. 7-8 (2021) pp.2-7.

2 In addition, if it constitutes a crime under the Criminal Code, the person who infringes the legal interest must naturally be punished. In Japan, the upper limit of the statutory penalty for insult is under consideration.

3 Of course, the site operators will act, such as deleting the accounts of the perpetrators. However, that is not enough of a deterrent.

4 For the history of the enactment of the Provider Liability Limitation Act, *see*, Shinichi Omura, Hiroyuki Osuga and Susumu Tanaka, *Tokuteidenkitsushinekimuteikyousya no songaibaisyousekinin no seigen oyobi hasshinsyajoho no kaiji ni kansuru horitsu* [Law Concerning Limitation of Liability for Damages of Internet service providers and Disclosure of Information on the Sender], Jurist No. 1219 (2002) p.101, Yasutaka Machimura, *Purovaida ni taisuru hasshinsyajouhokaijiseikyuken to karisyobun* [Right to request disclosure of information on the sender from the provider and provisional measures], Nanzan Hogaku Vol. 28 No. 3 p.418.

5 Victims had to use a multi-step court process in order to receive a judgment ordering remedy. In addition, according to the legislator, the plaintiff must not only allege and prove the objective facts pertaining to the violation of his or her rights, such as the decline in social reputation, but must also allege and prove that there are no circumstances that would prevent the establishment of a tort, such as circumstances that would prevent the illegality. *See*, Omura et. al., *supra* note 4, p.104.

6 To familiarize the public with the contents of the law, according to Article 1 of the Supplementary Provisions, the law will come into effect within one year and six months from April 28, 2021. The expected time is in the fall of 2023.

7 For the history of the Japanese Code of Civil Procedure, *see*, Hajime Kaneko, Kaoru Matsura, Koji Shindo, Morio Takeshita, Hiroshi Takahashi, Shintaro Kato, Toshio Uehara, and Hiroshige Takata, Jokai minjisosyoho 2 ed. 2011) pp.1-4 [ Shindo, Takahashi and Takata].

8 Various theories have been put forward as criteria for identifying the subject matter of litigation. However, in practice, in principle, the position that the subject matter of litigation is the rights or legal relations

prescribed by substantive law is maintained. *See*, Kaneko et. al., *supra* note 7 pp.760-764 [Takeshita], pp. 1336, 1342-1345 [Takeshita].

9 Before the reform, it was theoretically possible to merge both cases if they were related. However, since a *Hisyo* process was created for cases requesting the disclosure of sender's information, when using this new procedure, it became difficult to combine it with a case for damages, which is a litigation case, because the principles of trial are different.

10 The first step, the request for disclosure of information about the sender to the content provider, ends with only provisional protective measures, so that the request for disclosure to the access provider and the claim for damages against the sender will be contested in the judgment procedure. Incidentally, in 2020, the average duration of first instance proceedings in district courts is 9.9 months. In addition, if the decision is made in the adversary proceeding, it will be 13.3 months. https://www.courts.go.jp/app/files/toukei/894/011894.pdf (As of August 21, 2021). And of course, when appeals and petitions for revision are filed, more time is needed.

11 *See*, Yohei Shimizu and Yuichi Nakazawa, *Aratana saibantetsuzuki* [New adjudication process], Business Homu Vol. 21 No. 8 (2021) p.89.

12 *See*, Tomonao Onizawa and Daisuke Meguro, *Hasshinsyajoho no kaiji wo meijiru karisyobun no kahi* [Whether or not a provisional measure ordering the disclosure of information about the caller is permissible], Hanrei Times No. 1164 (2005) p.7, Tomonao Onizawa and Toshihiko Oku, *Internetto ni yoru meiyo shingai to karisyobun (2)* [Violation of honor on the Internet and provisional measures (2)] in Tokyo chisai hozen kenkyukai (ed.), *Minji hozen no zitsumu* [Practice of Provisional Measures for Civil Cases] Book one 3 ed. (2012), p.345.

13 *See*, Nobuyuki Seki, *Tetsudukihou kara mita internet kankei karisyobun no jitsumu* [Provisional measures on the Internet from the perspective of procedural law], Minjisosyo Zasshi No. 65 (2019) p.172.

14 For these reasons, some argue that instead of leaving the matter to judicial resolution, a solution through ADR should be constructed. As a recommendation for the use of alternative dispute resolution organizations, *see*, Yasutaka Machimura, *Internetto jou no hunso to sono kaiketsu* [Disputes on the Internet and their resolution], Horitsu jiho Vol.69 No.7 (1997) p.18, Yasutaka Machimura, Ryoji Mori, Toshimitsu Dan, Hideo Ogura and Toru Maruhashi, *Symupoziumu purovaida sekinin seigenho jusyunen* [Symposium: 10th Anniversary of the Enactment of the Law to Limit Provider Liability], Joho network law review Vol.12 ( 2014) pp.259-260 [ Machimura].

15 Seki, *supra* note 13, p.172.

16 Seki, *supra*, Machmura, *supra* note 4, 18-19.

17 There is a dispute over the interpretation of the phrase "clear". According to the legislator's explanation, this means that the violation of the right is obvious. In other words, again, the plaintiff must not only allege and prove objective facts pertaining to the violation of their rights, such as the decline in their social reputation but must also allege and prove that there are no circumstances that would presume the existence of grounds to prevent the establishment of a tort, such as grounds to prevent illegality. Ministry of Internal Affairs and Communications Consumer Administration Division II, General Communication Base Bureau (ed.), *Provaida sekinin seigen ho* [Law to limit provider liability] 2 revised ed. (2019), p. 79, Omura et. al. *supra* note 14. 104. This is said to be in order to prevent unjustified violation of the sender's right to freedom of expression, secrecy of communication, and privacy, Onizawa and Meguro, *supra* note 11, pp.4-5, Hirotaka Hujiwara, *Purovaida no hotekisekinin to hunso syori* [Legal liability of Internet service providers and dispute resolution], Horitsu no hiroba Vol. 65 No. 6 (2012) p.25, Hideyuki Sekihara, *Kihon kogi Provaida sekinin seigen ho* [Basic lecture on the law to limit provider liability] (2016), pp.101-102. However, regarding freedom of expression, there is a restriction that it is allowed under public welfare,

and with regard to the secrecy of communication, the secrecy of information about the communicating entity is allowed in order to guarantee the secrecy of the content of communication more completely. Therefore, some point out that there is no need to protect only peripheral information when the content of the communication is not secret. Ayumi Koike, *Internetto no denshikeijiban e no kakikomi no sakujo wo motomeru karisyobun* [Provisional measures to request deletion of posts on an electronic BBS on the Internet], in Masato Sekiguchi and Noriaki Sudo (ed.), *Saiban jitsumu taikei* Vol.13 *Minji hozen ho* [Compendium of Court Practice Vol. 13 Law Concerning Provisional Measures in Civil Cases] (2002), p.304. In addition, according to the general theory on the distribution of the burden of proof in civil procedure, facts related to obstacles to the creation of rights, such as grounds to prevent illegality, are those for which the person asserting the non-creation of rights bears the burden of proof. *See*, Kaneko et. al., *supra* note 7, pp. 1018-1020 [Matsuura and Kato]. In other words, according to that, the principle is that the defendant who refuses to disclose the information should respond by arguing the existence of grounds to prevent the illegality. Nonetheless, such an interpretation is doubtful. Toshimitsu Dan, *Provaida sekinin seigen ho ni okeru hasshinsyajouhoukaiji ni kansuru jitumuteki na mondai* [Practical issues on the disclosure of sender's information under the law to limit provider liability], Joho network law review Vol. 6 (2008) pp. 88-90, Kazuyuki Takahashi, Shigenori Matsui and Hidemi Suzuki (ed.), *Internetto to ho* [Internet and Laws] 4 ed. (2010), pp.78-79 [Takahashi], Hiroshi Shimizu, *Hasshinsyajohokaiji wo meijiru karisyobun ni tuite* [Provisional Measures to Order the Disclosure of Information on the Sender], Toyo Tsushin Vol. 53 No.4 (2016) p.26.

Of course, it is possible that the burden of proof may be shifted factually by interpretation, e. g. Supreme Court decision September 17, 1959, *Minshu* Vol.13 No.12 P. 1412, Supreme Court decision February 16,1968 *Minshu* Vol. 22 No.2 P. 217. However, the burden of proof should not be shifted on this issue. Indeed, LLPDIS has a structure that does not allow Internet service providers to make decisions about disclosure but allows the courts to do so. Tsuneo Matsumoto, *Netto jou no kenrishingai to purovaida sekinin seigen ho* [Violation of rights on the internet and the law to limit provider liability], Jiyu to seigi Vol.53 No. 6 (2002) pp. 66-67. If so, there is a possibility that it will be formalistically interpreted in a direction that does not place the burden of proof on the Internet service provider. However, the shift in the burden of proof is made for the purpose of achieving substantial equality of arms of the parties, and it is unacceptable considering the ideal of a fair trial to make the relatively heavy burden of proof on the victim heavier. Dan, *supra* note 17, p. 88, Takahashi et. al., *supra* note 17, p. 80. Therefore, the word “clear” should be interpreted as merely setting the degree of proof by the victim higher than usual from the viewpoint of balancing the constitutional interest of the sender and the need for remedy for the victim. Dan, *supra* note 17, pp. 88-90.

18 E. g., in Tokyo District Court decision January 21, 2005, Hanrei Jiho No. 1894 p. 25, the court suggested the possibility of easing the burden by stating that in proving the fact that “there are no circumstances that would lead one to infer the existence of grounds to prevent illegality,” the existence of proof should be determined in consideration of the fact that it is generally difficult to prove the non-existence of facts. The commentary on this decision, *see*, Hirohumi kawazu, *Hasshinsyajoho no kaiji wo meizuru danko no karisyobun ga ninka sareta jirei* [Case in which a decisive provisional measures order to disclose information about the sender was approved], Ginko homu No. 654 (2006), p. 58, Keiichi Sakamoto, *Hasshinsyajohokaijiseikyuken wo hihozenkenri to suru hasshinsyajoho no kaiji wo mitomeru danko no karisyobun ga mitomerareta jirei* [Cases in which decisive provisional measures to order the disclosure of information about the sender were approved], Hanrei Times No. 1215 (2006) pp. 238-239. However, this is only a last-ditch effort, and should be interpreted in accordance with the principle of burden of proof. Therefore, it *see*ms necessary to adopt legislative measures to clarify the change in the old interpretation.

Shimizu, *supra* note 17. 27-28.

19 This is said to be in line with the actual situation in Japan, where many communications are sent from terminals such as mobile phones. Machimura et. al., *supra* note 14, pp. 249-250 [Dan].

20 *See*, Seki, *supra* note 13, 172.

21 In particular, the legislator was worried that such provisional measures would cause the parties to give up on the fight, to avoid the burden of subsequent resolution by judgment. And the legislator thought that was contrary to the nature of provisional measures. It was also worried that once the information had been disclosed through provisional measures, it would not be possible to return to the undisclosed state even if a contrary conclusion was reached in subsequent judgment proceedings. However, it was also pointed out that if the hearing of provisional measures becomes more cautious and stricter for this reason, the significance of implementing provisional measures would be lost. Machimura, *supra* note 4, p.8.

22 Ministry of Internal Affairs and Communications, Office of Telecommunications Usage Environment Improvement (ed.), *Provaida sekinin seigen ho* [Law to limit provider liability] (2002), p. 55.

23 *See*, Onizawa and Meguro, *supra* note 11, p. 7, Onizawa and Oku, *supra* note 11, p. 345, Shimizu *supra* note 17, pp. 29-30.

24 Victims currently have virtually no way to obtain sender information other than through the courts. *See*, Onizawa and Meguro, *supra* note 11, p. 8.

25 It has been pointed out that when requesting access providers to disclose information about the sender, careful consideration should be given to the fact that the name and address of the sender will be exposed to the outside world. According to the person who made this point, the purpose can be achieved by simply ordering the access provider to save the sender's information. *See*, Onizawa and Meguro, *supra* note 11, p. 7, Onizawa and Oku, *supra* note 11, p. 346, Dan, *supra* note 16, p. 94.

26 In this context, it can be assumed that practices have been formed that differ from the intentions of legislators who are cautious about disclosing information. As mentioned above, the legislator *see*ms to be relatively focused on the protection of providers, but from the perspective of victim redress, I would assess this to be an appropriate formation of practice. Shimizu *supra* note 17, p. 30.

27 In practice, the right to be preserved by disclosing information about the sender is the right to request disclosure of information about the sender under Article 4 of the LLPDIS before its amendment. It is also understood that the content of this right is intended to release the provider from the obligation of confidentiality imposed on them and create an obligation to comply with disclosure if certain strict requirements are fulfilled. Masaya Nomura, *Tokyo chiho saibansyo minji daikyubu ni okeru internetto kankei karisyobun no syori no jitujo* [The Actual Status of the Processing of Internet-Related Provisional Measures at the Tokyo District Court, Civil Division 9], Hanrei Times No.1395 (2014) p. 26. Based on this, there is a view that a lawsuit *see*king disclosure of information about the sender is not intended to pursue economic interests per se, and therefore does not fall under the category of "actions related to property rights" (Article 5, Item 1 of the Code of Civil Procedure) or other cases in which special jurisdiction is allowed, and that jurisdiction is allowed only over the domicile or location of the person who is the defendant. Nomura, *supra* note 27, p. 26.

However, as in this view, the right to be preserved by a provisional measure ordering the disclosure of information about the sender should not be viewed as a simple formality. In the original sense, the right to request disclosure of information about the sender is a right as a means to realize the right to claim damages, etc. by using the disclosed information. As such, it does not have independent property value in and of itself. Based on this premise, the right to be preserved in this procedure may be formally the right to request disclosure of information about the sender, but in substance it is the right to claim damages

against the sender that the victim of the tort has. Machimura, *supra* note 4, p. 17.

Furthermore, since most domestic Internet service providers have their principal place of business or office in Tokyo, affirming jurisdiction only over the defendant's domicile could be a factor that would discourage victims living in rural areas from filing lawsuits. *See*, Japan Federation of Bar Associations, Provaida sekinin seigen ho kensyo ni kansuru teigen (an) [Draft recommendations on a review of the law to limit provider liability] (June 30, 2011) p. 9. In addition, if the Internet service provider is a foreign company, if it is not allowed to have any jurisdiction other than that related to its location, it may effectively close the door to redress for Japanese consumers. It is unreasonable that the Japanese courts should not have jurisdiction over a case where the article is written in Japanese, the victim is in Japan and the perpetrator is also in Japan. Machimura et. al., *supra* note 14, p. 253 [Ogura]. Even in that context, it is understood that the jurisdiction should not be limited to the court that has jurisdiction over the domicile or location of the other party. There is a criticism of such an understanding that although the victim's request for disclosure of information is related to the tort, it is not directly related to the remedy of the victim's rights, but rather should be considered as a management responsibility issue associated with the Internet service provider's business. Takahashi et. al, *supra* note 17, pp. 362-363 [Satoshi Watanabe]. It is true that from the point of view of disclosing information only, it can be seen as an issue of management responsibility. However, the essence of the claim is a claim for damages based on a tort, and we should not be overly concerned with formality. However, there is still the problem that the existence of jurisdiction may be disputed when an enforcement procedure is carried out in a foreign country based on the result of a procedure conducted in the place of tort as the jurisdictional cause based on this interpretation.

28 The place where the tort was performed is the place where the objective elements of the tort occurred, both the place where the tort was performed and the place where the results occurred. Kaneko et. al., *supra* note 7, p. 55 [Shindo, Takahashi and Takata]. Thus, if the place of occurrence of the result is included in the cause of occurrence of jurisdiction, the possibility of defense of the other party becomes an issue when the occurrence of the result occurs over a wide area, such as defamation on the Internet. Therefore, I understand that jurisdiction can be granted to Japan only when the outcome in Japan can be predicted. Shimizu, *supra* note 17, p. 31. As for the view that some limitations on the traditional interpretation of tort jurisdiction should be allowed because it is derived from Roman law and not with the Internet in mind, *see*, Seki, *supra* note 13, p. 175.

29 Shimizu, *supra* note 17, p. 31.

30 Nomura, *supra* note 27, p. 27.

31 Sekihara, *supra* note 15, pp. 120-122.

32 Sekihara, *supra* note 15, p. 157. In practice, this seems to be the most common method used. *See*, Misa Takahashi, *Purovaida sekinin seigen ho no kaikaku Gaiyo to jitumu e no eikyo* [Overview of reform of the law to limit provider liability and its impact on practice], LIBRA Vol. 21 No. 7-8 p. 11.

33 Dan, *supra* note 17, p. 91.

34 Nomura, *supra* note 27, p. 28.

35 Nomura, *supra* note 27, p. 34. In the practice of the Tokyo District Court, summonses are often sent using Japan Post's Express Mail Service (EMS) system, and the delivery is confirmed using the postal tracking service.

36 As an example of the latter, in a case in which a petition for disclosure of information on the sender is filed, a case in which a call by EMS cannot be made because the other party is a foreign company and the country in which the other party is located is not a party to the Convention on Service of Process or the Convention on Civil Procedure is considered.

37 In Japan, ordinary proof in litigation is considered successful when the judge is convinced of the existence of the fact with a probability of 80 percent or more. However, in the provisional measure, the so-called preponderance of the evidence, i.e., the judge is convinced of the existence of the fact with a probability of 51 percent or more, is successful. This is a lower level of proof to enable a quick decision to be made. In addition, the evidence available for this purpose is limited to that which can be immediately interrogated. *See*, Kaneko et. al., *supra* note 7, pp. 1010-1011 [Matsuura and Kato], pp. 1362-1364 [Takeshita], Ministry of Justice, Civil Affairs Bureau, Counselor's Office (ed.), *Ichimon itto minji hozen ho* [A question and answer Law Concerning Provisional Measures in Civil Cases] (1990), 55-57.

38 For example, there is the Tokyo District Court decision of September 30, 2015 (not published in the case law collection), which was based on the violation of portrait rights.

39 For example, if the sender connects to the Internet as an individual, using a server that has acquired an IP address, and posts on a bulletin board. Onizawa and Meguro, *supra* note 11, p. 7, 8.

40 *See*, Seki *supra* note 13, p. 177. He suggests issuing it as a provisional measure "in anticipation of voluntary implementation.

41 Sogabe, *supra* note 1, p. 2.

42 *ibid.*

43 Shimizu and Nakazawa, *supra* note 11, pp. 94-95.

44 This procedure was established in Germany as a closed, non-adversarial procedure for cases in which there is no substantive dispute, but in which a decision by the court is required, such as the selection of a guardian. In this procedure, the basic material for the trial may be collected ex officio. When finding facts, it is permissible to use methods other than the statutory methods to prove them. The format of the evaluation is a simple method of decision, which is called *Kettei*. Thus, this procedure does not sufficiently guarantee the parties the opportunity to assert their interests in the proceedings. However, it is possible for the court to carry out the process it deems appropriate in a simple and speedy manner. For this reason, Japan has made a policy shift from litigation to *Hisyo* proceedings for procedures that require speedy processing. Kaneko, *supra* note 7, pp. 15-21 [Shindo, Takahashi and Takata].

45 The idea of making this procedure *Hisyo* was also considered in the initial legislative phase. However, at the time, this did not happen because it took too much time. *See*, Machimura, *supra* note 4, pp. 5-6. However, the reform created a procedure in a short period. In these circumstances, it is possible that legislators will not act without social pressure.

46 Shimizu and Nakazawa, *supra* note 11, p. 9.

47 In practice, it is assumed that EMS will be used as the method of delivery.

48 Some believe that if the sender is reluctant to disclose, the Internet service provider will be obligated to file an objection. Tomohiro Kanda, *Hasshinsya no kenrihogo* [Protecting the Rights of the Sender], Business homu Vol. 21 No. 8 p. 96. However, the purpose of asking the sender for the reason is to let the sender provide materials to decide whether their opinion is acceptable or not, and therefore they should not be obliged to object.

49 This is to move the case to a judgment procedure in which the arguments are made in public, assuming that the request for speedy action can no longer be carried out because a complaint has been filed. The legislator believes that since the right to request disclosure of information about the sender is a substantive legal right, this will at least fulfill the demand for fair procedures necessary to determine the right. A similar mechanism has been adopted in lawsuits concerning claims based on bills and checks (Article 357 of the Code of Civil Procedure) and small claims cases (Article 378 of the Code of Civil Procedure).

50 If the parties reach a settlement outside of court, it is expected that the petition will be withdrawn.

51 A petition to make the sender provide information is treated as incidental to a petition for disclosure of the sender's information. *See*, Shimizu and Nakazawa, *supra* note 11, pp. 90-91.

52 The content of this notice will not be made known to the victim. Therefore, if the communication between providers through this notice is not successful, for example, if the content provider provides incorrect information, the disclosed information may ultimately be useless. *See*, Sogabe, *supra* note 1, p. 6, Takahashi, *supra* note 32, p. 13.

53 *See*, Takahashi, *supra* note 32, pp. 10-11.

54 In practice, international jurisdiction over actions against those conducting business in Japan for business in Japan (Article 9 Paragraph 1 Item 3 after the reform) will be used in many cases.

55 It has been pointed out that in a proceeding to request disclosure of information about the sender, if the complainant is not a user of the social networking service provided by the content provider, the complainant may not be bound by the agreement on jurisdiction. *See*, Shino Kaminuma, *Hasshinsyajohokaijiseikyu no kaigaijigyousya ni kakaru taiou to kentojiko* [Response to overseas service providers regarding requests for disclosure of sender information and matters to be considered], Business homu Vol. 21 No. 8(2021) p. 100.

56 If the victim is a consumer, I believe that agreements that grant international jurisdiction only to foreign courts should be invalidated.

57 Twitter, Facebook, and Instagram are typical examples.

58 Takahashi, *supra* note 32, p. 14, Yohei Shimizu, *Kaijijoho no taisyokakudai* [Expansion of the scope of disclosed information], Business Homu Vol. 21 No. 8 (2021) pp. 86-87. In practice, it is said that the existing provisions have been broadly interpreted in order to provide remedies for victims.

59 However, the specific content of the information to be disclosed is to be determined by the Ordinance by of the Ministry of Internal Affairs and Communications, and the Ministerial Order has not yet been clarified.

60 Shimizu, *supra* note 57, p. 87. In reality, content providers often have information about the sender's e-mail address, and there are few cases that fall under this category.

61 The requirements for exercising the right are also largely left to the Ordinance Ministry of Internal Affairs and Communications, which will be revealed in the future, and therefore it is unfortunately not clear to what extent this system can be used.

62 Depending on the content of the Ordinance by the Ministry of Internal Affairs and Communications, it is expected that social networking services such as Twitter, Facebook, and Instagram may fall under this category. *See*, Shimizu, *supra* note 57, p.87.

63 This support for the so-called login type is based solely on the premise that it is a requirement for content providers. *See*, Shimizu, *supra* note 57, p.88.

64 *See*, Sogabe, *supra* note 1, pp. 4-5.

65 https://www.saferinternet.or.jp/wordpress/wp-content/uploads/infringe_guidenline_v0.pdf (Present on August 26, 2021).

66 *See*, Guidelines on the Clarity of Violations of Rights, pp. 4-5.

67 *See*, Guidelines on the Clarity of Violations of Rights, pp. 6-9.

68 *See*, Sogabe, *supra* note 1, p. 5.

69 *See*, Sogabe, *supra* note 1, p. 6.

70 *See*, Kazuhiko Yamamoto, *Teiso wo youi ni surutame no tetsuzuki hoho* [Procedural methods to facilitate the filing of a lawsuit] in Masao Horibe, *Purovaida sekinin seigen ho jitsumu to riron* [Law to limit provider liability Practice and Theory] (2012), pp. 158-160.

71 In Japan, it is generally the Ministry of Justice that is in charge of legislation regarding court

proceedings, with procedural law researchers, judges, and lawyers playing a central role in the drafting process. However, the Ministry of Internal Affairs and Communications, which is the supervisory authority of the telecommunications industry, was in charge of the legislation for the procedures for disclosure of information on the sender, because it is related to the telecommunications system. I would like to think that the Ministry of Internal Affairs and Communications conducted the legislative work in a neutral and fair manner. However, there are many doubts about the deliverables.

72 Article 3 of the Supplementary Provisions stipulates that the government should review the status of implementation within five years of its enforcement.

73 The Ministry of Internal Affairs and Communications' ministerial ordinance on disclosure of information about senders has been reformed in 2011, 2015, 2016, and 2020 since the law was enacted in 2002. Can we say that this is a lot?

74 The writing was completed on August 31, 2021.