
MAJOR LEGISLATION & TREATIES

Jan.–Dec., 2010

1. Constitutional Law

The Act for Partial Revision of the Broadcast Law etc.

Law No. 65, December 3, 2010 (effective within nine months from the day of promulgation, excluding some parts)

Background:

With the changes in the digital environment and the progress in information technology, a new system of law concerning telecommunications has come to be required in Japan. Around 2006, the national government began examining a drastic review of systems of broadcasting and telecommunication in various councils and committees. These organizations discussed various issues, including, for instance, a united system of law concerning broadcasting and telecommunications, a new ministry which might regulate it, the form that Nippon Hoso Kyokai [NHK] should take, and so on.

In 2009, the Information and Telecommunication Council [referred to as the ITC] published a report on “What a General System of Laws Governing Telecommunications and Broadcasting Should Be”

(Consultation No. 14, 2008). The report requires the national government to legislate new laws for providing “Contents (Broadcasting Services)”, “Transmission Services” and “Transmission Facilities” on the basis of the spread of digitalization and broadband networks. The report also states that during the review, it was necessary to consider the following five points; the consolidation of the systems of broadcasting and telecommunications, the promotion of the free circulation of information, the ensuring of a broadcaster system that expands the choice of management, the securing of safety and reliability, and the protection of users’ and beneficiaries’ interest.

The Cabinet Council decided the bill for “the Act for Partial Revision of the Broadcast Law etc.” [referred to as “the Bill” and “the Revision Act”] and submitted it to the Diet in March, 2010. The Revision Act reorganizes the eight laws related to broadcasting and telecommunications into four new laws. The new laws provide a system for participating in broadcasting services and making the de-concentration principle legal, etc.

As is well known, in September 2009, the governing party alternated from the Liberal Democratic Party [LDP] to the Democratic Party [DP]. Under Kazuhiro Haraguchi, who was the first minister of MIC in the government of the DP, some clauses concerning the organization of NHK, the Radio Wave Council, and a system of ownership of media companies were inserted in the Bill. The report by the ITC did not mention these matters. Although the Bill was put on the shelf once and rejected, the Diet finally passed it in November, 2010. The day of enforcement is within nine months from the day of promulgation, excluding some parts. Yet, all the clauses which had been interpolated under minister Haraguchi were deleted through consultations between the LDP and DP.

Main Provisions (Broadcast Law):

Article 2

The interpretation of this Law and the orders issued thereunder shall be in accordance with the following definitions:

- i) “Broadcasting” means transmission ... of telecommunications ... intended to be received directly by the general public.
- ii) “Basic Broadcasting” means broadcasting that uses electric wave fre-

quencies or priorities allocated to wireless stations based on the regulations of the Radio Law

iii) “General Broadcasting” means broadcasting other than basic broadcasting.

xxi) A “Recognized Basic Broadcaster” means a broadcaster who receives recognition under Article 93 (1).

xxii) A “Specified Ground Basic Broadcaster” means a broadcaster who has a license for a broadcast station used for ground basic broadcasting operations based on the regulations of the Radio Law.

xxiii) A “Basic Broadcaster” means both a Recognition Basic Broadcaster and a Specified Ground Basic Broadcaster.

xxv) A “General Broadcaster” means a broadcaster who has been registered under Article 126 (1) and who has made a notification as stipulated in Article 133 (1).

xxvi) A “Broadcaster” means both a basic broadcaster and a general broadcaster.

Article 5

(1) Any broadcaster shall establish standards for the compilation of broadcast programs (hereinafter referred to as “Standards of Broadcast Programs”) according to the type of the broadcast programs (classified into a cultural program, an educational program, a report program, and an entertainment program, etc.; the same shall apply hereinafter) and to the type of viewers these programs are designed for, and shall compile the broadcast programs in accordance with such standards.

(2) Any broadcaster shall, upon having established the Standards of Broadcast programs for Domestic Broadcasting, etc. according to the provisions of the preceding paragraph, make such standards public in accordance with the provisions of the applicable MIC ordinance. The same shall apply to the amendment of standards.

Article 12

Any broadcaster shall, in broadcasting a commercial program for any consideration, ensure that a person who receives the commercial program can reasonably identify that it is a commercial program.

Article 174

When a broadcaster (except a Specified Ground Basic Broadcaster) has violated any provisions of this Act or activities or dispositions based on this Act, the Minister of MIC may rescind the license of broadcasting for a fixed period not exceeding three months.

Editorial Note:

A lot of issues are raised by the revision of the system of broadcasting and telecommunications. In this note, I will try to comment on a few issues concerning the protection of free speech.

Clearly from the title of the Act, the Broadcast Law regulates “broadcasts”. Because of the public character and technology of broadcasting, “broadcasts” have been regulated by the national government more strictly than other media which has a certain influence on public discourse, for instance, national newspapers or publishers, in Japan as well as other democratic countries. So, for the speaker, it is a significant problem whether a communication corresponds to a “broadcast” or not. The revision of the Act introduces an important change in the definition of a “broadcast.”

In previous laws, “Broadcasting” meant the transmission of *radio communication* intended to be received directly by the general public” (Article 2 i). The new laws define “broadcasting” as a “transmission of *telecommunication* intended to be received directly by the general public.” “Broadcasting” is divided into “Basic Broadcasting” and other “General Broadcasting”, and restricted by the national government’s response to each character. Because some obligations, such as establishing and making public the standards of broadcasting programs or reporting of accidents in broadcasting to the minister of the MIC, are imposed on a broadcaster under the Broadcast Law, the unlimited spread of the definition of “broadcasting” may lead to an expansion of the range where the government restricts speech through telecommunications. According to answers by the government in the Diet, the law does not apply to some kinds of telecommunications, such as internet broadcasting, because it is not the telecommunications intended to be received “*directly*.” However, it is still vague and contradicts the correspondence of IP (Internet Protocol) broadcasting to “broadcasting” regulated by the Law. Furthermore, it is said

that the time was too short to review the Bill in the Diet. Surprisingly, the time for discussion of the Bill in the House was substantially about an hour.

The development of communication technology makes it easy for civil people to communicate by many ways. Clearly, a lone individual can send one opinion to another individual or to the public more easily than before the popularization of the internet. In addition, some traditional media, which are national newspaper companies, are also positively groping for a way to send information by the internet recently. The comprehensive and broader definition of “broadcasts” may have the possibility of connecting with excessive government regulation of public discourse. The government should carefully apply the law based on the principle of free speech protected by the Constitution.

2. Criminal Law and Procedure

The Act on the Partial Revision of the Penal Code and the Code of Criminal Procedure

Law No. 26, April 27, 2010 (Effective on April 27, 2010).

Background:

Recently, a citizens’ movement of crime victims and their family members has grown in Japan, and called for the government to revise the limitation of prosecution of heinous and serious crimes, such as murder. Moreover, it has been noted that the purport of the limitation of prosecution has not always been true of these types of crime. This purport includes the reduction of the emotional request for a harsh penalty over time.

In December 2004, the Act on the Partial Revision of the Penal Code, etc. (Law No. 156, December 8, 2004) was enacted. In this 2004 revision, the period of the limitation of prosecution was extended with regard to the crimes to which the death penalty or life or not less than 15 years imprisonment with or without labor is applicable. This 2004 revision postulated the existence of the limitation of prosecution. In contrast, the said Act