

# Remedy for Personal Information Infringement in Korea



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**Korea Information Security Agency**



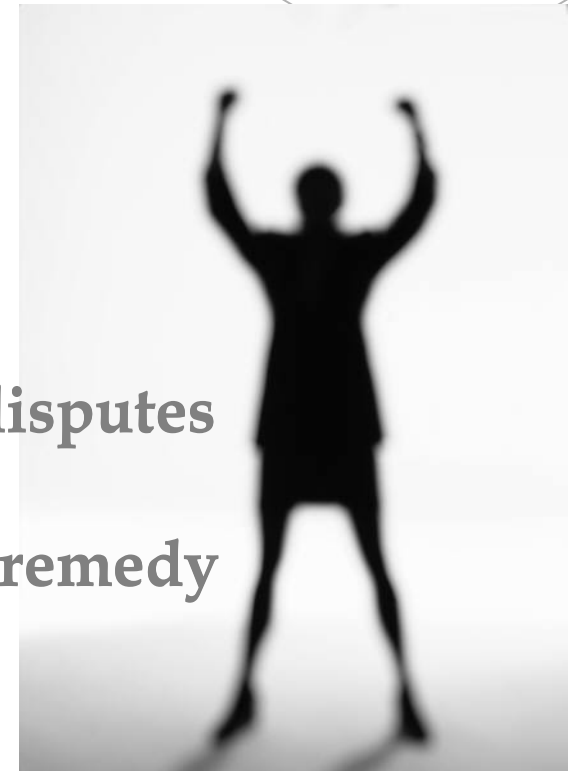
- **Introduction**

- Dispute resolution methods
- The necessity of ADR
- ODR as a new ADR

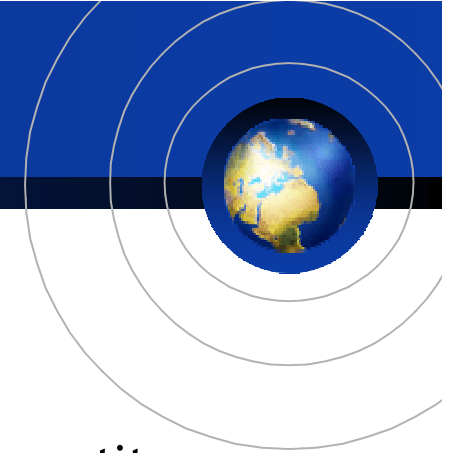
- **ADR in Korea for Personal Information disputes**

- **Execution Model for the PI infringement remedy**

- **Additional Comments**



# 1-1. The necessity of ADR



- **Environmental changes**
  - **Rapid development of IC Technology**
    - Enabling Accumulation and Utilization of PI in a large quantity
    - Increasing PI collection and use by Private business entities
    - Increasing PI and privacy infringement
- **The characteristics of PI infringement**
  - Closely related with the privacy
  - Often accompanies mental damages
  - The spreading speed of the damage is fast
  - Small but collective damages
- **The Limitation of lawsuit**
  - Most representative and general method to resolve disputes
  - But Time-consuming and expensive process

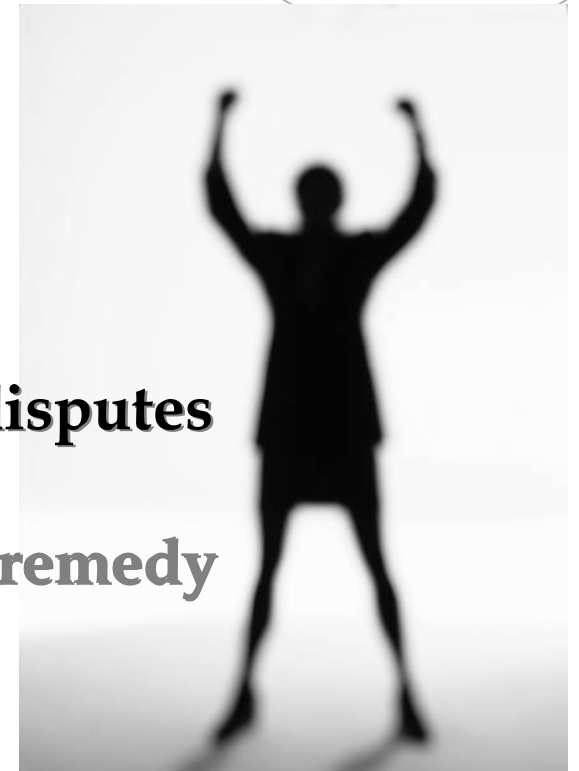
# 1-2. The necessity of ADR



- **Alternative Dispute Resolution (ADR)**
  - **Complementary (supplementary) means of the lawsuit**
  - **Common features of ADR**
    - Promptitude and Cheapness (even free of charge)
    - Not open to the public (ensure secrecy of parties concerned)
    - Participation of experts with non-legal background
    - Creative rules
    - Flexibility (Informality)
- **Online ADR**
  - **Online Tools such as e-mail, chatting room and Bulletin Board, etc are used for ADR**
- **Merits of ODR**
  - **The removal of barriers : Geographical, Time, Cost barriers**
  - **Promptitude**



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## 2-1. ADR of Korea : Major ADR providers



- About 50 ADR providers exist in Korea
- Most of them are operated by or under the influence of the Korean Gov,t. But some of them are operated by consumer groups or business groups

Name	Ground Act	Establishment	Scope of Mediation	Related Organization
Personal Information Dispute Mediation Committee	Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (Article 33)	2001	Dispute related to personal information infringement	Ministry of Information and Communication(MIC), KISA
Consumer Dispute Mediation Committee	Consumer Protection Act (Article 34)	1987	Dispute between consumers and business	Korea Consumer Protection Board
E-commerce Dispute Mediation Committee	Framework Act on Electronic Commerce (Article 28)	2000	Dispute related E-transactions	Korea Institute for Electronic Commerce
Financial Dispute Mediation Committee	Act on the Establishment, etc. of Financial Supervisory Organization (Article 51)	1988	Disputes between financial institution and clients	Financial Supervisory Committee

## 2-2. ADR of Korea for PI disputes: PICO (1)



- **Establishment (Dec 3, 2001)**

- **Ground Act** : §33 Act on Promotion of Information and Communications Network Utilization and Information Protection, etc

- **Composition**

- **Members** : 15 experts from related fields such as, lawyers, scientists, engineers, socialists, public administration scholars, representatives of consumers and businesses groups, government officials, etc.
- **Guarantee of member's status** : to assure 'independency', non of the members shall be dismissed against one's will during one's term

- **Operation**

- **Budget**: Operated by government fund (MIC)
- **Administrative support**: Korea Information Security Agency
- **Meeting** : Closed meeting in principle

## 2-2. ADR of Korea for PI disputes: PICO (2)



### ● Functions

- Provision of dispute mediation service
- Legal consulting for businesses and gov't regarding new systems and projects (like PIA)

### ● Scope of Mediation

- Any disputes involved PI processed through IC networks such as Internet, mobile phone, etc
- Any disputes involved PI processed by Travel agencies, Airline carriers, Department, Discount store, Hotels and Educational institutes, etc
- \* Exception : PI collected and retained by public organizations or employer

### ● Appliance

- Not only users but also businesses can apply for mediation



## 2-2. ADR of Korea for PI disputes: PICO (3)

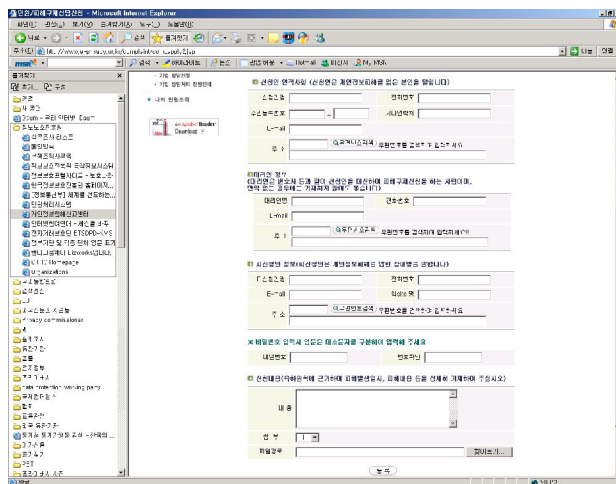


### ● Procedure of Dispute mediation

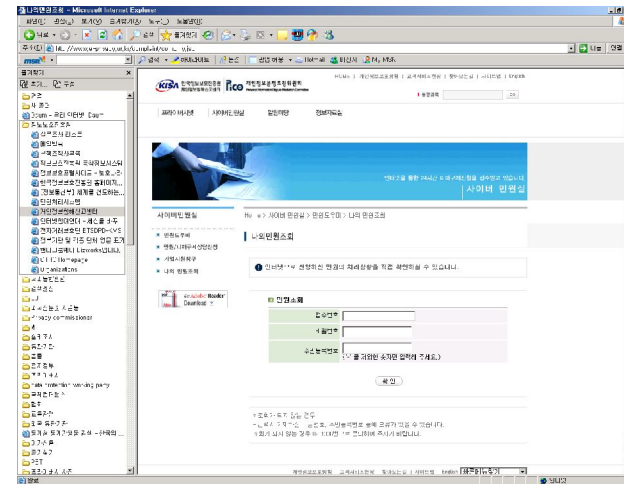
#### - Application for mediation

- Method : Web-site(663, 54.7%), E-mail(94, 7.8%), telephone(387, 32%), mail, Fax, personal visit, etc.
- Notification of receipt : Notifying the parties concerned for the receipt of application through e-mail, SMS, phone, etc immediately

Applicants can see the status of their complaints' process by logging into the PICO's website



Webpage for application



Webpage for checking the status of process

## 2-2. ADR of Korea for PI disputes: PICO (4)



### ● Procedure of Dispute mediation (Cont')

#### - Fact finding

- Demand for submission of relevant materials from parties concerned  
(No investigation power)
- Confirmation and verification of facts : hearing of references, consultation with experts and appraisers

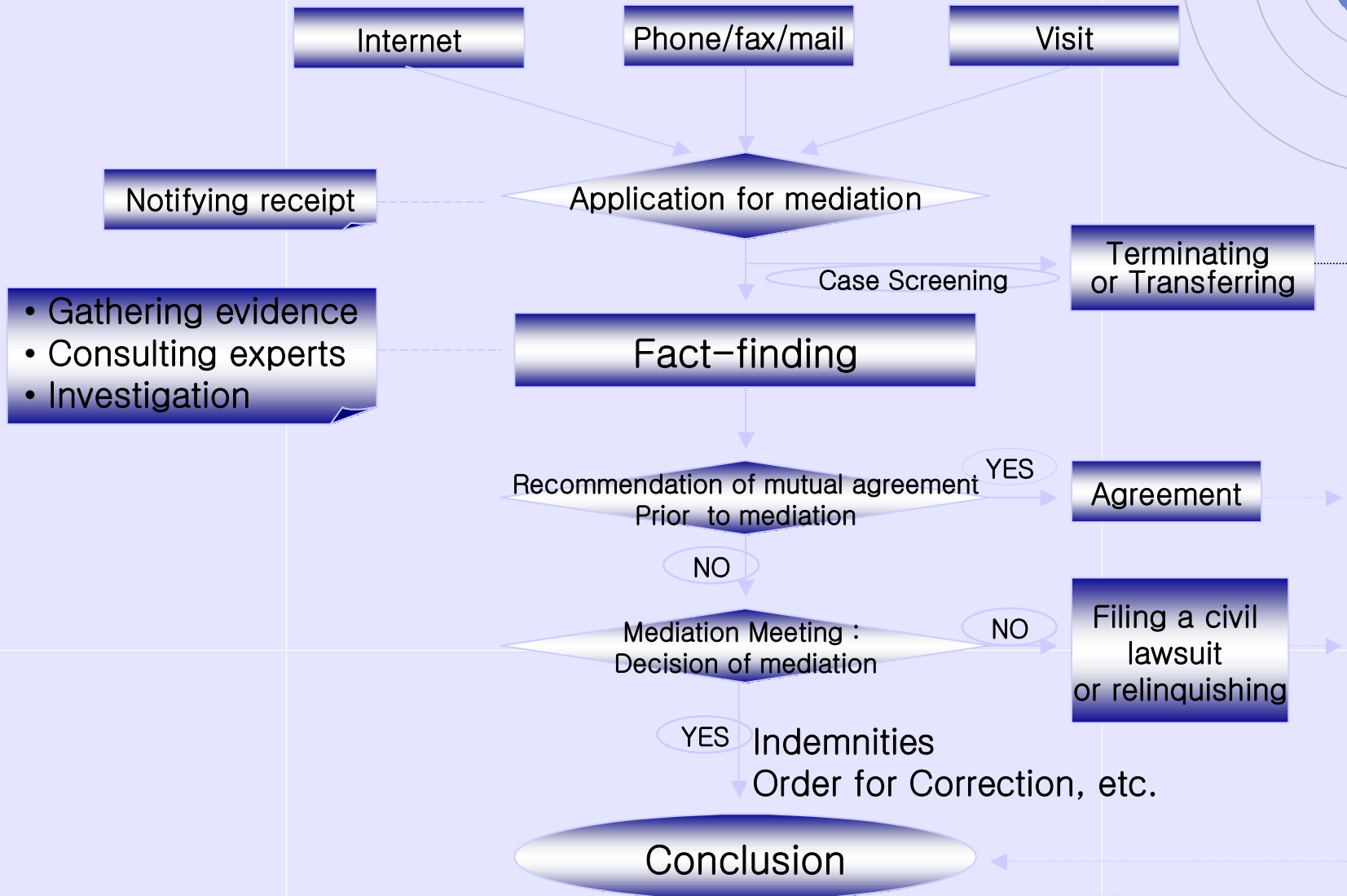
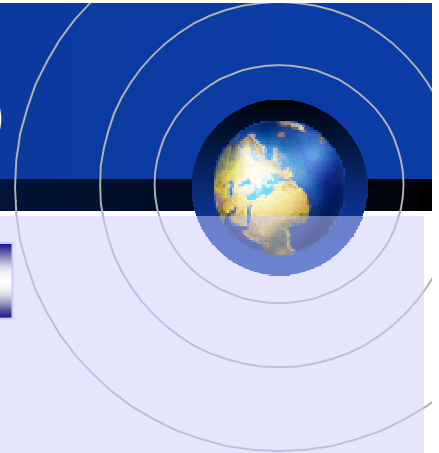
#### - Recommendation of mutual agreement prior to mediation

- Opportunity to settle a dispute on a voluntary basis prior to mediation decision by the PICO

#### - Mediation decision

- Parties concerned have opportunity to attend and set forth their opinion
- Final mediation plan is provided (at the most, **within 60 days of the receipt date, usually 10~15 days**)

# Flowchart of Dispute Mediation (PICO)



## 2-2. ADR of Korea for PI disputes: PICO (5)



### ○ Effect of Mediation

#### - Effect equivalent to reconciliation contract in a civil law

- If both parties accept mediation plan, the mediation is concluded
- If one party does not accept the mediation plan within 15 days from the date he or she receive the plan, the mediation fails

\* On the contrary, mediation of other ADR providers in Korea has effect equivalent to consent decree (ex. Consumer Dispute Mediation Committee)

#### - Civil lawsuit

- In the case of mediation failure, either party concerned is eligible to file a lawsuit

### ○ Administrative and Criminal Punishment

- In the case that non compliance with the relevant law is found and is regarded as a repetitive and willful (malicious), KISA can provide MIC, Police or Prosecutor's office with the result of the investigation regarding the received complaints

## 2-2. ADR of Korea for PI disputes: PICO (6)



### Appliance and result of process

Measures taken	No. of Cases	
	Jan~Apr (Accumulated)	
Consultation and Info Provision	6,079	
Dispute Mediation (Including mutual agreement prior to mediation)	243	
Informing the non-compliance	Police office	—
	MIC	—

MIC: Ministry of Information and Communication

### Rate of Acceptance

	Total	Accepted	Not Accepted
No. of Mediation cases	243	239	4
Percentage	100	98.3	1.7

## 2-2. ADR of Korea for PI disputes: PICO (7)

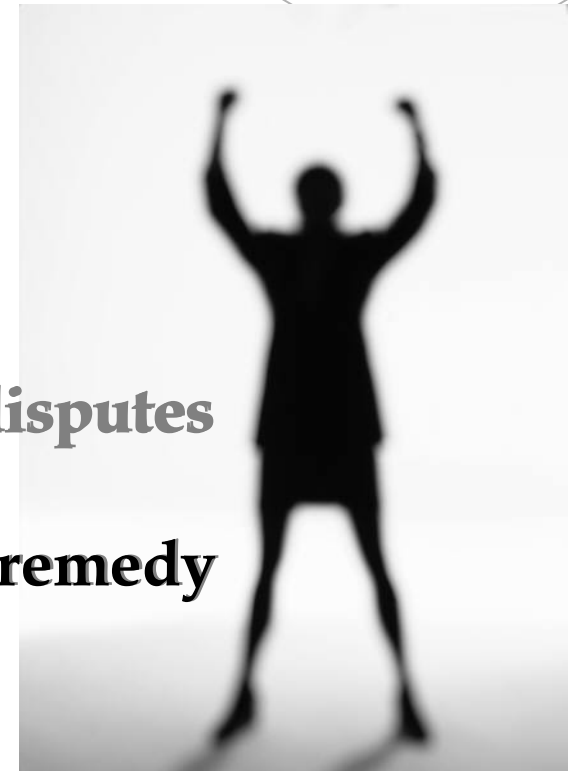


### Cases for remedy for PI by category in 2003 and 2004

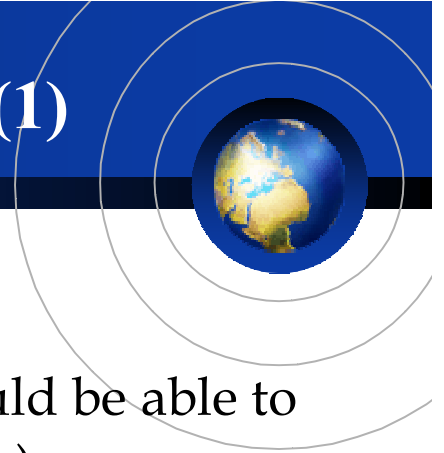
Category	2003	2004
Collecting PI without the information subject's consent	19	39
Breaching the duty to notify or state when collecting PI	2	3
Collecting PI excessively		2
Using PI for any other purposes or providing it to a third party	39	144
Damaging, infringing or disclosing PI by a PI handler	28	93
Breaching the duty to notify in the case of entrusted PI processing	2	
Not designating a PI officer	1	
Divulging PI due to inadequate technical or administrative measures	12	26
Not destroying PI after achieving the purpose of collection or provision	81	13
Not responding to the request to withdraw consent, or view and correct PI	52	82
Not taking measures to make it easier to withdraw consent or view and correct PI than to collect	1	4
Collecting PI of minor without the consent of a legal guardian	561	402
Sending commercial ad for profit		11
ID thefts, damaging or infringing PI	39	292
Others	8	99
<b>Total</b>	<b>845</b>	<b>1,210</b>



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### 3. Execution Model for PI infringement Remedy (1)

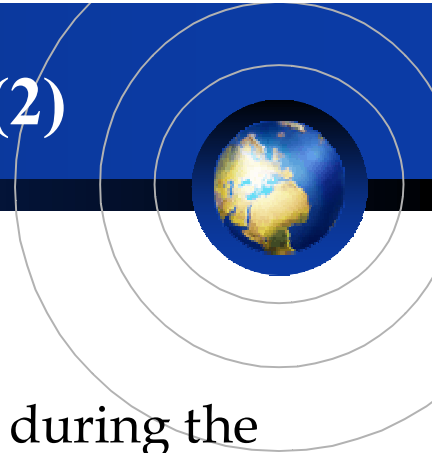


- **Pursuit Big ROI (Return On Investment)**

- **Convenience and easiness** : Consumer or user should be able to access easily (ex : Hot-line 1336 and free of charge in Korea)
- **Promptitude** : The mediation process must be initiated as quickly as possible and has to be finished within limited time  
(ex : At the most, 60 days in Korea. But normally process is finished within 10-15 days in practice)
- **Efficiency** : Making a set of standards for repetitive cases as a sample of the mediation
- **Flexibility** : Should not be rigid so that disputes could be resolved by concession and negotiation at any time
- **Variety** : Develop many different ADR providers so that users could choose according to their situations



### 3. Execution Model for PI infringement Remedy (2)



- **Guarantee Credibility of ADR**

- **Independency** : Members' status should be guaranteed during the term so that their decision is not affected by others
- **Neutrality** : Not only the committee itself but also members must not show partiality (ex : evasion or avoidance)
- **Fairness** : Each party should be offered to present his or her opinions regarding any dispute
- **Transparency** : Procedures, principles, effect and result of mediation should be opened to public so that all parties know them
- **Professionalism** : Members must have suitable qualifications by law

### 3. Execution Model for PI infringement remedy (3)



- **Respect the honor and free will of parties**

- **No legal obligation** : Parties concerned may not abide by the mediation proceedings and decisions at their discretion
- **Guarantee the secrecy** : PI of concerned parties and business secret must be protected
- **Representation** : Parties concerned could select or appoint third person (ex: lawyers) in any stage to represent themselves

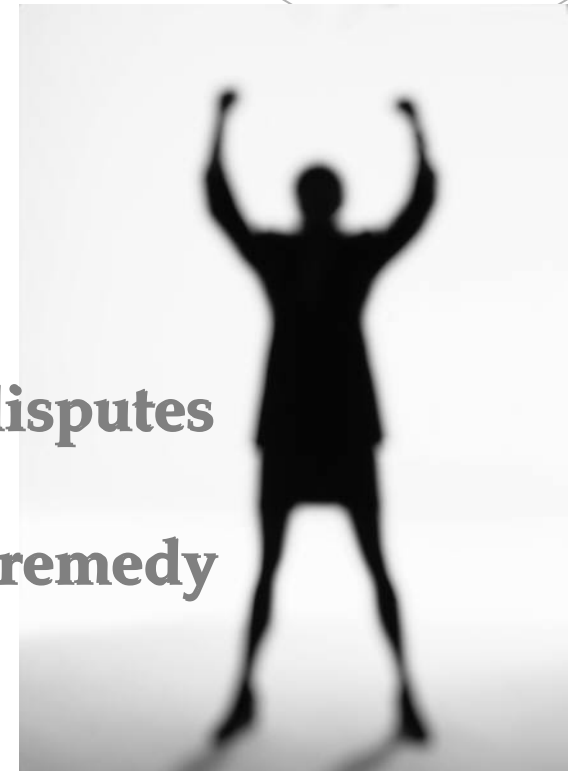
- **Guarantee of Independency**

- Members should not be dismissed against one's will during the term
- Members are required to have appropriate qualification by law
- Recommendation and Appointment has to be done by separate parties
- Representatives from Consumer and Business groups has to be included

- **Pursuit of international cooperation**



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## 4. Additional Comments



- **Privacy Authorities should have three major Functions**

- **Complaints and disputes resolution (major function)**

- The receipt, investigation, and resolution of complaints which data subjects (consumers and users) apply for

- \* **Appropriate Authorities (Power)**

- : Submission of related data/Investigation power

- **Promotion of compliance and self-regulation**

- Make the information processors (businesses) voluntarily follow the rules and laws
- Education, consultation, provision of guidelines and adjuster of self-regulation mechanism

- **Provision of advices on legal system and policy**

- Government, Business entities, etc

## 4. Additional Comments

- **The authorities should consider the development including technology to foster their functions**
- **Chief Privacy Officers (CPO) should be appointed in not only public organization but also private businesses so that they function as cooperators of Privacy Authorities**

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Any Question?

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