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THE FUNCTIONS AND PROBLEMS OF THE "CROSS-WAIVER" CLAUSE AND A NEW
PROPOSAL FOR APPROPRIATE DEMARCATION OF LIABILITY.**Abstract**

As technology advances, the number of rocket launches is increasing, and the utility and importance of launch services to carry satellites and other payloads into a specific position in outer space are becoming even more important. As space development by private operators progresses, a significant point of contention is how to distribute liability through agreements. In this regard, they customarily agree to the so-called "Cross-Waiver" in which the launch provider and payload customer mutually waive legal liability. This contractual practice is derived from the "Knock for Knock" principle and is the traditional contractual practice in the space business context. The practice has been formed whereby the parties mutually disclaim liability and cover their own losses with space insurance.

However, with the increasing frequency and certainty of launches, it is questionable whether the "Knock for Knock" principle is appropriate for today's space launch practice. In addition, as the development of small satellites has progressed and the so-called "piggyback" launch method, many contracting parties will be involved in a single launch. In such cases, it is questionable whether it is appropriate to bring up the "Cross-Waiver" clause, which used to be a rule for the division of liability not among the "piggyback" payload customers but between the launch services provider and the payload customer. In particular, in the event that a launch fails due to a defect in a "piggyback" satellite, the "Knock for Knock" principle is not necessarily applicable as an appropriate division of legal liability among the payload customers. In addition, the relationship between the "Cross-Waiver" clause and the Convention on International Liability for Damage Caused by Space Objects has not necessarily been adequately discussed.

In this presentation, the presenter introduces the outline and function of the current "Cross-Waiver" clause, then compares it with other projects in which "Cross-Waiver" clauses are used (e.g., oil field business and nuclear power business), and proposes potential problems with and ways to improve it. In conclusion, the presenter proposes an epoch-making legal regime to prevent future disputes: setting up a third-party organization to evaluate appropriate liability limits according to the difficulty of the said project and the possibility of compensation by insurance instead of a broad "Cross-Waiver" clause as used in the current contract.