

## TECH, IP AND TELECOMS LAW UPDATES

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1. Japan Fair Trade Commission: Passage of the "Act on Promotion of Competition for Specified Smartphone Software"
2. Personal Information Protection Commission: "Consideration based on the So-Called Triennial Review of the Act on the Protection of Personal Information"
3. AI Policy Updates
4. The Global Cross-Border Privacy Rule (CBPR) system progresses
5. Recent Developments in Japan's Mobility Policy

We are pleased to present the July issue (Vol.10) of our "TECH, IP AND TELECOMS LAW UPDATES," a collection of the latest information about Japanese technology, intellectual property, and telecommunications law. We hope that you will find it useful to your business.

### 1. Japan Fair Trade Commission: Passage of the "Act on Promotion of Competition for Specified Smartphone Software"

On June 12, 2024, the "Act on Promotion of Competition for Specified Smartphone Software" was enacted (Act No. 58 of 2024). The Japan Fair Trade Commission ("JFTC") submitted the bill in April 2024 ([Vol.9 of this newsletter](#) contains an overview thereof and the [press release](#) issued by the JFTC on the date of enactment of this law provides further details).

This law will generally take effect within one year and six months from the date of promulgation (June 19, 2024), excepting some provisions. It aims to ensure an environment of vigorous competition, spurring development and innovation, while also taking into account other important needs, such as security.

## TECH, IP AND TELECOMS LAW UPDATES

### 2. Personal Information Protection Commission: "Consideration based on the So-Called Triennial Review of the Act on the Protection of Personal Information"

Based on Article 10 of the Supplementary Provisions of the Revised Act on the Protection of Personal Information ("**APPI**") of 2020, the Personal Information Protection Commission ("**PPC**") has been carrying out the so-called "*Triennial Review*" through hearings from experts and stakeholders; on June 26, 2024, an [interim report](#) was released and is open for [public comment](#) until July 29, 2024. The interim report lists the following items as requiring individual consideration:

- (i) Effective rules for the handling of highly protected personal information such as biological data;
- (ii) Concretization and categorization of the scope of application of the provisions of Article 19, Paragraph 1 regarding prohibition of inappropriate use of personal information and Article 20, Paragraph 1 regarding proper acquisition of the same;
- (iii) Strengthening of regulations on opt-out provisions regarding personal information transfer to third parties, including a review of the obligation of confirmation;
- (iv) Regulations on personal information of children;
- (v) Collective injunctive relief and damage restoration system by organizations;
- (vi) Introduction of a surcharge system, and strengthening of the recommendation and order system to expedite and expand the scope of the system;
- (vii) Appropriateness of criminal penalties and statutory penalties;
- (viii) Rationalization of the scope and content of reporting of leaks, and notification to individuals in accordance with the risk of infringement of individual rights and interests;
- (ix) Necessity and scope of an obligation to notify and inform individuals about illegal provision of their data to a third party;
- (x) Use of data that does not require individual consent, such as for generative AI and research activities at medical institutions; and
- (xi) Promotion of voluntary initiatives by the private sector, such as PIA (Privacy Impact Assessment), and the appointment of a person in charge of handling personal data

These are only interim arrangements, and it is envisioned that the direction of travel for the above items may be revised based on opinions received through public comments and discussions with stakeholders. In particular, the discussions regarding a potential or necessary (vi) surcharge and (v) injunction relief system and damage restoration system by organizations is expected by the end of 2024 to be robust and fruitful, since the potential or likely impacts on businesses and individuals are significant. In this regard, the PPC has [announced](#) that a committee regarding the Triennial Review was established on July 24, 2024.

## TECH, IP AND TELECOMS LAW UPDATES

The Triennial Review is available on a [special page](#) on the official website of the PPC, where the status of the review is also updated.

### 3. AI Policy Updates

Discussions continue to evolve around AI policies in Japan, primarily through the AI Strategy Council. To date, Japan has not introduced comprehensive regulatory laws concerning AI. Instead, the approach has generally been to promote voluntary initiatives by businesses through non-binding soft laws, such as the publication of AI business guidelines. However, at the AI Strategy Council meeting held in May 2024, there were suggestions that proper regulations might be necessary to ensure a healthy competitive environment. In light of these discussions, consideration is being given to potentially implementing 'hard law' regulations within certain limits, depending on the perceived impacts and risks posed by AI. For future studies, it was also announced on July 19, 2024 that a study group was established under the AI Strategy Council.

Additionally, the relationship between AI and intellectual property rights has garnered attention following the [Interim Report](#) published by the Intellectual Property Rights Examination Committee for the AI Era in May 2024. This Interim Report, which outlines discussions within the committee, does not carry legally binding force. However, it is likely to prove influential with policymakers. Regarding copyright, the Legal Subcommittee of the Copyright Subdivision of the Cultural Council had already published in March 2024 its "General Understanding on AI and Copyright". This Interim Report also delineates legal perspectives concerning other intellectual property laws, including trademark and design rights. For instance, it clarifies that training AI with data containing someone else's registered trademark does not constitute an infringement of trademark rights, as it does not fall under the specifications of designated goods or services. Regarding patents, in May 2024, the Tokyo District Court ruled that inventors defined under patent law are limited to natural persons, thereby excluding AI.

Businesses and entrepreneurs in this space will benefit from continuing to pay careful attention to its legal systems, guidance and case law, as the legal regulations and interpretations surrounding AI remain in flux and somewhat opaque.

### 4. The Global Cross-Border Privacy Rule (CBPR) system progresses

The Global CBPR system, which expands the existing framework of the APEC Cross-Border Privacy Rules (CBPR) system, is progressing toward implementation.

Initially established in 2011, the APEC CBPR system certifies that businesses operating within APEC member countries comply with the APEC Privacy Framework. In

## TECH, IP AND TELECOMS LAW UPDATES

April 2024, the necessary documentation to activate the Global CBPR system was published, and the inclusion of privacy enforcement agencies from non-APEC regions such as Bermuda, Dubai, and the United Kingdom was [announced](#).

Under Japanese law, (specifically Article 28 of the Act on the Personal Information Protection,) when personal data is transferred to a third party in a foreign country, it is not necessary to obtain the individual's consent for the transfer if the third party has established a system that continuously implements measures equivalent to those required of the business operator transferring the personal information ("equivalent measures"). [Guidelines](#) 4-1 and 4-3 of the Act, which address the Provision to Third Parties in Foreign Countries, specify that the requirement for equivalent measures is considered satisfied if either the source entity providing the personal data has obtained certification under the APEC CBPR system (and consequently has imposed flow-through obligations on the third party), or the third party in the foreign country receiving the data has such certification.

The global CBPR system is poised to assist businesses in handling cross-border data transfers, and the further expansion of the system is noteworthy for its facilitative effects.

### 5. Recent Developments in Japan's Mobility Policy

#### (1) *Ride-sharing*

As introduced in Volumes [7](#) and [8](#) of this Newsletter, in response to societal challenges such as a lack of local transport providers and insufficient travel options, a series of measures have been implemented in Japan, including improvements to the conventional paid passenger transport system for private use and the so-called "Japanese version of ride-sharing services," in which private cars and regular drivers are used only in certain areas and during certain times of the day.

On June 18, 2024 the "[2024 Report on Digital Administrative and Financial Reform](#)" was released. It summarizes the measures implemented in early 2024, and also states that in accordance with the "[Report of the Council for the Realization of Regional Public Transport Re-Design](#)" (dated May 17, 2024), measures will be implemented to realize sustainable regional transportation reconstruction through coordination and collaboration among various stakeholders.

Among these measures, the Japanese version of ride-sharing services, which started in April 2024, has now been upgraded (on July 1, 2024) to allow the use of private vehicles for Japanese ride-sharing services during periods of 5 mm of rainfall or more per hour is forecast, in order to further meet demand for transportation during rainy weather<sup>1</sup>.

<sup>1</sup> [https://www.mlit.go.jp/report/press/jidosha03\\_hh\\_000432.html](https://www.mlit.go.jp/report/press/jidosha03_hh_000432.html)

## TECH, IP AND TELECOMS LAW UPDATES

Conversely, discussions on legislation to allow non-taxi operators to enter the ride-sharing market (often referred to as the complete lifting of the ride-sharing ban) were scheduled to take place by June 2024, following an assessment of the effectiveness of the Japanese version of ride-sharing services. However, there were objections to moving too quickly with these discussions. As a result of this opposition, the government's Council for Regulatory Reform decided not to establish a clear deadline for when these legislative discussions should occur<sup>2</sup>.

Additionally, on July 2, 2024, the government stated that it believes there are also potential issues from the perspectives of safety assurance and user protection with the paid passenger transport model where only the drivers of private vehicles bear responsibility for transportation, without any other entity bearing responsibility for operation management or vehicle maintenance, including ride-sharing services operated by "platformers" who do not take responsibility for managing of drivers or vehicles<sup>3</sup>. The government has thus indicated a thus far cautious stance on the potential to completely lift the ride-sharing ban.

### (2) *Automated driving*

On June 21, 2024, the Mobility Working Group of the Digital Society Promotion Council in the Digital Agency, compiled and released its "[Mobility Roadmap 2024 - Basic Concepts and Measures for Commercialization of New Mobility Services](#)" (the "Roadmap"). The Roadmap outlines measures to be taken in each of three stages: (i) the Comprehensive Business Demonstration Stage (FY 2024), (ii) the Preliminary Commercialization Stage (FY 2025-2026), and (iii) the Full-Scale Commercialization Stage (FY 2027 and beyond), focusing on the "establishment of business models," the "establishment of technology," and the "establishment of systems and rules."

The same day, Japan's Cabinet approved the "[Basic Policy on Economic and Fiscal Management and Reform 2024 - Realizing a Growth-Oriented Economy Driven by Wage Increases and Investments](#)". This policy aims to plan with respect to, and operate, autonomous driving at about 100 locations in FY 2024, to strive for year-round operation plans and implementation in all prefectures in FY 2025, and to aim to start full-scale commercialization of services using new technologies such as autonomous driving in FY 2027, while establishing a specialized accident investigation system, among other measures aligned with the Roadmap. We will continue to monitor this space and update you as to its trends as outlined in the Roadmap.

<sup>2</sup> The "[Interim Report of the Automobile Subcommittee of the Land Transport Division of the Transportation Policy Council](#)," published on May 15, 2024, states, "The measures implemented from 2023 to the beginning of 2024 have been in effect for a relatively short period, and it is considered that it is not yet possible to properly evaluate their effects. Therefore, it is necessary to carefully and thoroughly assess whether these measures have successfully fulfilled the need for mobility."

<sup>3</sup> <https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/213/toup/t213209.pdf>