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## Data Security Newsletter

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# Trends in the Development of AI-Related Legislation ~ The AI Strategic Council and AI Institutional Study Group Releases "Interim Report (Tentative)" ~



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## I . Introduction

On December 26, 2024, the AI Institutional Study Group ("**Study Group**") published the "[Interim Report \(Tentative\)](#)" ("**Interim Report**"). The Study Group was established under the AI Strategic Council, which was formed in May 2023 under the Cabinet Office. Since July 2024, the Study Group has been discussing the state of the AI governance systems, including the necessity of a legislative framework. The government is opening a call for public comments on the Interim Report from December 27, 2024 to January 23, 2025.

The Interim Report is based on a policy that balances both the promotion of innovation and risk mitigation, respects the voluntary actions of business operators, and assumes the use of existing individual laws and regulations. The report states, however, that "in terms of ensuring effectiveness, it should be implemented by legal systems to establish and handle the ... guidance by the government, and investigate and understand actual status related to AI, while voluntary actions by business operators are important, and the impacts on business operators' activities should be taking into account," and makes recommendations for the prompt development of legislation related to AI. In the future, it is expected that the government will aim to submit a bill during the 150-day ordinary session of the Diet beginning in January 2025, based on

the public comments received.

In this newsletter, we will focus on issues that are closely related to private businesses, including overseas businesses, from the perspective of legislative development.

## **II. Background to the Publication of the Interim Report**

While AI has the potential to greatly contribute to the improvement of people's lives and the development of the national economy, various risks are becoming apparent, such as the risk of criminal sophistication, information manipulation to create disinformation and misinformation, and security risks. Japan has responded flexibly to such risks mainly through existing laws and soft laws including guidelines. However, according to the results of a survey on public awareness of AI, only 13% of respondents in Japan think that AI can be used safely under current rules and laws, and 77% believe that AI needs to be regulated. In addition, in various countries, mainly Europe and the United States, discussions and examinations on legal systems related to AI are progressing in earnest.

In light of this situation, in July 2024, the government established the Study Group to conduct interviews with various stakeholders, including businesses, experts, and local governments, to examine the ideal AI governance systems, including the necessity of a legislative framework. This Interim Report is a compilation of the results of the examination based on the interviews and discussions.

## **III. Direction of Specific Legal Systems and Policies (Interim Report III)**

In the section "III. Direction of specific legal systems and policies," the Interim Report proposes the direction of specific legal systems and policies, including the future legislations.

[Outline of the direction of specific legal systems and policies (excerpted from the Interim Report)]


### Specific Directions for Systems and Policies

■ Overall items (Ⅲ.1.)

- **Strengthening the government's function of a strategic leadership board and formulating strategy**
- **Strengthening function of a strategic leadership board** to oversee the whole picture
- **Formulating a strategy (basic plan)** to contribute to promoting safe and secure research and development, and use of AI.
- **Improving safety**
- **Establishing of guideline by the government (in accordance with the Hiroshima AI Process), and cooperation by business operators.**
- **Conducting surveys and collecting information by the government, and guidance, advice and information provision, etc. to business operators and citizens**

Aiming to be the easiest country to develop and use AI

**Prompt legalization is necessary**  
 A system aiming to be a global model



■ **Use by the Government (Ⅲ.2.)**

- Proper AI government procurement and use, etc.

■ **Use in infrastructure services (Ⅲ.3.)**

- Response by each business act, etc.

While some of the policies recommended in the Interim Report do not necessarily call for legislation at this time, the following will focus on the items that are recommended to be addressed by legislation from the perspective of the impact on private businesses, including overseas businesses.

## 1. Strengthening the government’s function of a strategic leadership board and formulating strategy (Interim Report Ⅲ.1. (1))

The Interim Report proposes that the government’s function of a strategic leadership board should be strengthened to promote integrated measures from research and development to use in the economic society. This function is important because the efforts of various actors and processes involved in the process of AI from research and development to use are closely related to each other and need to be carried out in an integrated and cross-cutting manner. In order to promote comprehensive measures, it is necessary for the strategic leadership board to formulate a strategy or a basic plan. In addition, **it should be legislated** in order to strengthen the function of a strategic leadership board for AI and clarify its authority to request cooperation from relevant administrative agencies.

## 2. Improving safety (Interim Report Ⅲ.1. (2))

In order to improve the safety of AI, the Interim Report states that (1) it is necessary to ensure at least transparency and appropriateness throughout the life cycle from research and development to use, (2) it is

considered effective to use safety evaluations which business operators voluntarily undertake and third-party certifications, and (3) the government should survey the actual status regarding rapidly evolving AI technology and usage trends, provide information, and, as necessary, request relevant entities to take action. Among these matters, while it is important for businesses to take voluntary measures, it is necessary for the government to ensure effectiveness when developing guidelines and investigating and grasping the actual status related to AI. Therefore, **it is recommended that legislation be implemented** while taking into account the impact on the activities of business operators. The table below briefly summarizes the direction of response for each item that is recommended to be implemented by legislation.

<p><b>Ensuring appropriateness and transparency through AI lifecycle</b></p>	<p>For safe and secure research and development and use of AI, transparency should be ensured to share the necessary information between developers and providers, and between providers and users. On the other hand, it is important to limit the information sharing to the extent that it is truly necessary in order to avoid placing an excessive burden on business operators and disclosing extensive information.</p> <ul style="list-style-type: none"> <li>➡ In order to ensure appropriateness, it is appropriate for the government to develop guidance based on the spirit of international norms such as the Hiroshima AI Process, and to encourage business operators to take voluntary actions in accordance with various norms.</li> <li>➡ In order to ensure appropriateness including ensuring transparency, the government should understand the situation of business operators by surveys, and based on the results, provide necessary support including responses based on existing laws. <b><u>As it is not possible to understand the situation of business operators or provide necessary support without the cooperation of business operators, it is appropriate to respond by legislation so that it is possible to ask for domestic and overseas business operators to cooperate including information sharing, etc.</u></b></li> </ul>
<p><b>Investigation and information dissemination by the government regarding serious</b></p>	<p>It is appropriate for the government to first collect information and understand on the actual status related to development, provision, use of AI which constantly changes from perspectives of both technology and business activities. It is also appropriate for the government to provide information to the public to the extent</p>

<p><b>incidents</b></p>	<p>necessary, so that AI can be used effectively and appropriately by business operators, citizens can deepen their understanding and interest in promoting research and development and use of AI, and companies can fulfill their accountability while considering confidential information.</p> <ul style="list-style-type: none"> <li>• In particular, with regard to AI models that many citizens use daily, the government should collect information related to safety and transparency of AI including supply chain risk mitigation measures. In addition, it is important for the government to collect information regarding the actual status of AI introduction in infrastructure services.</li> <li>• If a serious accident caused by the use of AI actually occurs, the government will need to take measures to prevent its recurrence or escalation, as well as to raise awareness of recurrence prevention measures, by business operators that develop and provide AI.</li> </ul> <p>➔ <b>Since this investigation and dissemination of information cannot be carried out without the cooperation of business operators, it is appropriate to respond by legislation so that the government can require domestic and overseas business operators to cooperate to provide information.</b></p>
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As can be seen from the above summary, from the perspective of private sectors, the main focus of legislation is to ensure transparency and appropriateness, and to foster cooperation between the public and private sectors in investigating and understanding the actual status (in particular, cooperation in the provision of information to the government). Therefore, it is expected that the new legislation envisioned at this time will not impose obligations such as strict regulation of conduct or the establishment of a governance framework. However, even though the obligations are relatively moderate, there are some points that need to be detailed for specific legislation, including the scope and exceptions to the obligation to cooperate in providing information, and the granularity of the guidelines that the government plans to develop.

## IV. Basic Approach to Legal Systems (Interim Report II)

In addition to the direction of specific legal systems and policies including the future legislation described above, in the section “II. Basic approach to the legal systems,” the Interim Report illustrates basic concepts for the future design of AI systems more generally. In particular, the report points out that, while AI can generate various risks depending on how it is developed and used, it has the potential to greatly contribute to the improvement of people’s lives and the development of the national economy. The report emphasizes the importance of “promoting innovation and mitigating risks” to create an environment conducive to researching, developing, and implementing AI. In addition, it is necessary to consider promoting international cooperation, such as discussions on international AI governance, including the Hiroshima AI Process, and efforts by the AI Safety Institute (AISl) to ensure international consistency and interoperability.

[Outline of the Basic Approach (excerpt from the Interim Report)]



Based on the above basic policy, Section II.3 of the Interim Report clarifies the direction as follows; “in order to ensure balance between the promotion of innovation and risk mitigation, an appropriate combination with soft law such as laws and guidelines should be used” and “basically, the autonomy of business operators should be respected, and regulations by laws should be limited to cases where voluntary efforts by business operators cannot be expected.”

In other words, in the field of AI, where technological development and service changes are rapid, there is a risk that excessive regulations could suppress research and development, as well as the development and deployment of services, thereby undermining Japan’s competitiveness in the future. The report sees previous initiatives positively. The initiatives include responses centered on existing laws and regulations, such as the guidance by the Personal Information Protection Commission (June 2023), “General Understanding on AI and Copyright in Japan” by the Legal Subcommittee under the Copyright Subdivision of the Cultural Council (March 2024), and “Interim Report” by the Intellectual Property Study Group under the Cabinet Office (May 2024). The initiatives also include quick and flexible responses through soft law, such



as “AI Guidelines for Business” by the Ministry of Internal Affairs and Communications and the Ministry of Economy, Trade and Industry (April 2024, revised in November 2024).

On the other hand, the Interim Report also points out the limitation of soft law, which has to rely on voluntary actions by business operators. In addition, it is necessary to respond appropriately to the risks that will emerge in the future due to the rapid development of AI, according to the content of each field, and in particular, “as for AI that actually poses or is highly likely to pose a serious threat to fundamental human rights and interests such as life, body, and property, as well as to social safety and national security, the need for regulations should be considered depending on its content of risks or severity of social impact of the risks.” There are various points to keep in mind when introducing new laws and regulations, but the following perspectives are particularly noteworthy.

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## 1. Overseas business operators

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Many of the generative AI used in Japan are provided by overseas business operators. Therefore, Section II.2. (2) of the Interim Report states that “in order to ensure the effectiveness of the legal system even for overseas business operators that are difficult to obtain compliance cooperation due to geographical factors, etc., formulating rules should be considered that clearly include overseas business operators as well.” The report also mentions that “in practice, if an overseas operator has a branch office or representative in Japan, it may be possible to consider requesting responses through these entities.”

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## 2. Minimum necessary regulations based on analysis

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Section II.3. of the Interim Report states that, if the government is to respond by legal regulations, it should be “necessary to protect the rights and interests that truly need to be protected” in consideration of the risks posed by AI, taking into account the impact on the activities of business operators. “In doing so, it is important to be aware of the division of roles between the government and business operators, and to clearly define the line between what is subject to regulations and what is permissible for business operators’ activities.” As a prerequisite, the report states that “with various AI models and uses in existence, at each stage of the AI lifecycle, such as development, provision, and use, it is necessary to analyze the factors of potential risks, including the types of AI models, the nature of the risks they pose, and the impact they may have on different stakeholders.”

In addition, the following points are listed as perspectives for consideration.

<p><b>The principle of technological neutrality of regulations</b></p>	<p>It is also important to consider based on the principle that “regulations should not force or favor the use of specific types of technology in order to achieve their goals.”</p>
<p><b>Protection of proper research</b></p>	<p>“With regard to applying regulations in cases of testing inappropriate AI in order to do proper research related to AI safety, etc., it is necessary to consider including whether it is needed or not.”</p>
<p><b>Consideration of the burden on start-up companies, etc.</b></p>	<p>“When considering legal systems that are broadly targeted at business operators in general, it is necessary to consider the burden on business operators in compliance with the systems, so that they can be complied by business operators of any scale, including start-up companies.”</p>

### 3. Whether penalties are required

Even if new laws and regulations are introduced, there may be various variations regarding the content of obligations and enforcement in the event of a violation. In this sense, the boundary between hard law and soft law is merely relative to the design of individual systems, and there can certainly be hard laws that are innovation-friendly. In this regard, for example, on the necessity of penalties, it is noteworthy that Section II.3. (2) of the Interim Report explicitly refers to the option of introducing legislation without penalties by stating the following:

“If there is any penalty based on laws, public organizations can invoke some kind of coercive power, which means an advantage that it is easy to ensure effectiveness of the rules, but, it may hinder the development of the regulated field, and there is also the drawback that it lacks flexibility, as it takes a certain amount of time to consider their scope by the fact that the regulations which affect the rights and interests of citizens need to be clear. Even laws that do not involve restrictions can discipline domestic and overseas business operators and thereby ensure a certain level of effectiveness by clearly stating their obligations and responsibilities in the laws.”



## 4. Whether it is reasonable to make a distinction based on the scale of AI

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In other countries, there are cases where there are differences in the presence and degree of regulation depending on the scale of AI, such as the amount of training computation, and the number of users. In this regard, general-purpose AI that can handle various tasks was generally thought to improve performance as the amount of training data and the number of model parameters increased. But recently, there have been cases where performance has increased regardless of the amount of training data. Section II.3. (3) of the Interim Report states that “in light of the development of high-performance AI that is not dependent on its scale, it is necessary to consider what factors should be taken into account,” and makes reservations about whether regulations should be differentiated according to the scale of AI.

## 5. What's next?

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As mentioned above, the government is opening a call for public comments on the Interim Report from December 27, 2024 to January 23, 2025. Based on the results of public comments, legislative work will be carried out with the aim of submitting the bill at this year's ordinary session of the Diet. If the direction indicated in the Interim Report is to be maintained in the future, the first step will be to build the legal system that focuses on public-private cooperation to ensure transparency and appropriateness, and for the government to investigate and understand the actual status. At the same time, it will be necessary to respect the voluntary actions of private business operators from the perspective of balancing the promotion of innovation and risk mitigation. This approach is positioned as “to promptly implement social systems, including legal systems related to AI, to make AI research, development, and implementation the easiest and to serve as a model for other countries.”

Now that generative AI has exploded, it is becoming increasingly clear that discussing the simple dichotomy between hard law and soft law offers little real benefit. While leveraging the strengths of AI risk management centered on Japan's soft law to date, it is important to assume the possibility that currently unforeseen risks may manifest in the future. The Interim Report represents an important first step in providing a legal system that serves as a flexible foundation for legal backing, enabling effective responses in emergencies and allowing for appropriate monitoring of domestic and overseas businesses. It can be seen as an expression of the Japan-style approach, which differs from that in Europe and the United States. However, given that technological developments surrounding AI and the social environment in Japan and abroad are expected to change rapidly, the direction presented in this report is only a starting point. It is anticipated that the design and operation of the legal system will continue to be constantly examined, centered on the government's function of a strategic leadership board that will be strengthened in the future, to appropriately respond to newly emerging risks.