TECH, IP AND TELECOMS LAW UPDATES

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We are pleased to present the September issue (Vol.11) 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. Cabinet Secretariat releases an Expert Panel Summary of its Discussions to Date on Improving Japan's Response Capabilities in the Field of Cyber Security

The “Expert Panel on Improving Japan's Response Capabilities in the Field of Cyber Security”, established by the Cabinet Secretariat, published its “Summary of Discussions to Date” (“**Interim Summary**”) on August 7, 2024. The purpose of the panel is to consider the development of a legal system, etc., needed to realize new initiatives in the field of cybersecurity, with the aim of improving Japan's response capabilities to a level equivalent to or higher than that of other major developed states, based on the National Security Strategy (Cabinet decision on December 16, 2022).

The Interim Summary is made up of four sections: (i) “Strengthening Public-Private Cooperation”, (ii) “Use of Communications Information”, (iii) “Access and Neutralization”,

and (iv) “Cross-Cutting Issues”. Each section lists issues that are thought to need to be considered in the future. For example, with respect to section (i) there is said to be a need to make incident reporting mandatory for critical infrastructure operators, and with respect to section (ii) there is said to be a relationship between the use of communications information and the secrecy of communications based on the Telecommunication Business Act.

In a related development, the current administration (under the Liberal Democratic Party of Japan) compiled a “Proposal on the Direction of Cyber Security Policy” on September 3, 2024, and momentum is building for legislation arising from this proposal. Whilst the Interim Summary and this interim proposal are subject to change, they provide a useful set of signposts for market participants about the potential shape of things to come.

2. Ministry of Economy, Trade and Industry Announces its “Policy for Establishing a Security Conformity Assessment System for IoT Products.”

On August 23, 2024, the Ministry of Economy, Trade and Industry released its “Policy for Establishing a Security Conformity Assessment System for IoT Products.” This initiative is a response to increasing cyber threats that exploit vulnerabilities in Internet of Things (“**IoT**”) devices. The policy outlines a framework for assessing the security of IoT products purchased by government bodies and businesses, using a set of universal standards.

Under this new system, IoT products that pass the assessment will receive a certification label. Government agencies will be encouraged to procure only those IoT products that carry a label indicating they meet the necessary security standards. The policy anticipates implementing multiple levels of security assessments, ranging from basic threat standards common to all IoT products (☆1) to more specific standards tailored to different types of IoT products (☆2 to ☆4), depending on the required security level.

The standards for ☆1 are set to be officially released in mid-2024, with the system scheduled to be operational by March 2025. Furthermore, standards for ☆2 and higher will be developed for certain categories of IoT products in the latter half of 2024, with the system expected to begin for these categories in late 2025 or thereafter. In our view these standards have the potential to become de-facto standards (and indeed marketing tools) in the Japanese market.

3. AI Policy Updates

Discussions regarding AI regulations within the Japanese government are progressing. In July 2024, the AI Strategy Council initiated the AI Regulatory Study Group to explore potential legal frameworks for AI regulation beyond the existing soft law. This group is engaging with stakeholders and analyzing international examples. The Study Group held two meetings in August 2024, where they discussed current AI policies and challenges in the regulatory framework. They are expected to release a preliminary report in the fall of 2024.

Another notable development in AI and copyright is the "AI and Copyright Checklist & Guidance" published by the Copyright Division of the Agency for Cultural Affairs on July 31, 2024. This document, which builds on recently published guidelines from various government bodies, including (i) a "General Understanding on AI and Copyright in Japan" published by the Legal Subcommittee under the Copyright Subdivision of the Cultural Council, (ii) an Interim Report published by the Intellectual Property Rights Examination Committee for the AI Era, and (iii) the AI Guidelines for Business published by the Ministry of Internal Affairs and Communications, and the Ministry of Economy, Trade and Industry, introduces measures for AI developers, providers, users, and non-commercial users to reduce the risk of infringing rights and to preserve copyright holders' rights. For instance, it suggests that AI developers implement technical measures to prevent the generation of works that closely resemble copyrighted materials used in training datasets, as a way to reduce liability risks. While this document is not legally binding, it holds significant reference value for parties involved in generative AI and may well be referred to by judges asked to consider related disputes.

4. Ministry of Internal Affairs and Communications Releases its "Study Group on How to Ensure the Soundness of Information Distribution in Digital Space"

On September 10, 2024, the Ministry of Internal Affairs and Communications released its "Study Group on How to Ensure the Soundness of Information Distribution in Digital Space" (the "**Summary**") and the public consultation results thereof. The Summary outlines the risks and issues related to disinformation and misinformation in digital spaces and proposes measures to ensure the soundness of information distribution.

The Summary highlights that, with the widespread use of information transmission platform services such as social media, there are risks associated with the distribution and dissemination of disinformation and misinformation, and certain structural risks such as attention economies and filter bubbles. It also points out the fact that new technologies and services such as generative AI have the potential to exacerbate these risks.

The Summary further organizes and clarifies the responsibilities and roles of each stakeholder in addressing the risks and issues surrounding information distribution as “basic principles.” As part of a comprehensive approach, the Summary proposes six key measures: (i) raising awareness and improving information literacy, (ii) securing and developing human resources, (iii) promoting fact-checking across society, (iv) research and development of technologies and testing, (v) international collaboration and cooperation, and (vi) institutional initiatives. Regarding *institutional initiatives* in particular, the Summary states that it is appropriate to advance the concretization of measures such as institutionalization, aimed at ensuring the effectiveness of content moderation against disinformation and misinformation. These measures include requesting large information transmission platform operators to accelerate responses to illegal disinformation and misinformation, and to regulate repeat offenders who disseminate such information. The development of legal frameworks is expected to be a focal point of interlocutors' attention moving forward.