

## TECH, IP AND TELECOMS LAW UPDATES

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1. Consumer Affairs Agency Releases Notification and Operation Standards for Stealth Marketing Regulations
2. Japan Electronics and Information Technology Industries Association Releases *"Smart Home IoT Data Privacy Guidelines"*
3. Ministry of Economy, Trade and Industry Releases its *"Fashion Law Guidebook 2023: New and Basic Knowledge for the Future of Fashion Business"*
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We are pleased to present the May issue (Vol.3) of "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.Consumer Affairs Agency Releases Notification and Operation Standards for Stealth Marketing Regulations

On March 28, 2023, based on the Act against Unjustifiable Premiums and Misleading Representations Article 5-3, [the Consumer Affairs Agency specified "Representations that are difficult for ordinary consumers to distinguish as being those of a business operator" \(Cabinet Office Notification Order No. 19 of 2023\) and established "Operational Standards" in respect of the same. You can find additional information about the standards for the examination of Stealth Marketing \(in Japanese only\) at this link.](#)

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Based on the summary of the "[Study Group Report on Stealth Marketing](#)" (see [Vol. 1 of the January 2023 issue of this Newsletter](#)), this defines "representations that are difficult for ordinary consumers to distinguish as being those of a business operator" as "a representation made by a business with respect to transactions of goods or services it supplies, which is recognized by general consumers to be difficult for them to distinguish as a representation of the business". The operational standards, in turn, provide the purpose and approach of the regulations.

The operational standards stipulate that if a business has a third party display something on a social networking service or word-of-mouth site (for example, on Yelp), and the business is involved in determining the content of the display, the display is considered to be a display by the business. The regulation also states that whether or not it is difficult for the ordinary consumers to determine whether the labeling is or is not that of a business is to be determined based on factors such as whether or not it is clear to the ordinary consumers that the labelling is that of a business.

This regulation will be enforced from October 1, 2023, so each business should consider the content of its labelling and take appropriate steps to ensure compliance before the regulation comes into effect.

### 2. Japan Electronics and Information Technology Industries Association Releases "[Smart Home IoT Data Privacy Guidelines](#)"

On March 30, 2023, the Japan Electronics and Information Technology Industries Association (JEITA) published the "[Smart Home IoT Data Privacy Guidelines](#)," which outlines privacy measures that should be implemented by businesses handling consumer IoT data.

Although some IoT data is not subject to the Act on the Protection of Personal Information, the Guidelines provide measures that smart home-related businesses should take from the perspective of privacy protection to ensure that users' rights and interests are not infringed by inappropriate handling of IoT data, including data that is not currently subject to such legal discipline.

The Guidelines set forth the following rules:

- i. Rules regarding the items for entry and the required granularity of the description when explaining the life cycle of the data, what data is acquired, how the data is acquired, and for what purposes the data is used (being Guidelines for Notification, Public Announcement, and Explanation);
- ii. Rules regarding when it is necessary to consider obtaining consent from users and how consent should be obtained (being guidelines for Obtaining Consent);

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and

- iii. Rules regarding the provision of functions that allow users themselves to control the disclosure, correction, addition, deletion, and discontinuance of use of their data (Guideline for Ensuring Users' Self-Control).

The three rules are expected to be referred to when businesses create privacy policies to be presented to users and also when creating equipment and drafting service specifications.

The importance of privacy governance is also mentioned from the perspective of effectively addressing privacy protection as a business entity as a whole; the three requirements to be addressed by business leaders, key items in privacy governance, and initiatives of Privacy Impact Assessment are introduced with reference to the "[The Guidebook for Corporate Privacy Governance in the Digital Transformation \(DX\) Era](#)" (a "[Summary of the Guidebook for Corporate Privacy Governance in the Digital Transformation Era](#)" is also available).

### 3. Ministry of Economy, Trade and Industry Releases its "*Fashion Law Guidebook 2023: New and Basic Knowledge for the Future of Fashion Business*"

On March 31, 2023, the Ministry of Economy, Trade and Industry ("METI") released the "[Fashion Law Guidebook 2023: New and Basic Knowledge for the Future of Fashion Business](#)". This was compiled based on discussions at the "Fashion Future Study Group - Fashion Law WG" established at the initiative of METI.

Fashion law is a relatively recent field of law that has been attracting increasing attention and that deals with various legal issues related to the fashion industry and fashion businesses. It has been established as a field of law against the backdrop of globalization and the development of digital technology. The business environment surrounding fashion is now changing dramatically, and the fashion industry and its businesses need to respond flexibly to these changes. This guidebook divides the legal matters necessary for developing a fashion business into the following topics (1) through (7), organizes them into practical checklists, and provides explanations for each:

(1) what you should do first when you launch your brand, (2) what you need to know about fashion design rights, (3) what you should be aware of when asking outside creators for promotion and PR, (4) what you should know about production and distribution, (5) what you should know about sustainability, (6) what you should know

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when considering doing business overseas, and (7) what you should know when taking on the challenges of the digital fashion domain.

Since fashion law is closely tied to intellectual property rights (such as trademark and design rights), this guidebook is a useful reference not only for developing a fashion business, but also from the perspective of an introduction to aspects of Japanese intellectual property law.

### 4. The Liberal Democratic Party of Japan Releases its "*web3 White Paper*"

On April 6, 2023, the web3 project team of the Liberal Democratic Party of Japan's (LDP) Digital Society Promotion Headquarters published a draft proposal entitled "[\*web3 White Paper: Towards an era where everyone can utilise digital assets\*](#)". The white paper is expected to influence future web3 policymaking in Japan not least because of the longstanding electoral success of the LDP.

It covers various issues, including nine immediate challenges that call for attention. These challenges include international regulations, tax reform, audit opportunities, decentralized autonomous organizations (or DAOs), token screening/issuance/distribution, consumer protection, financial institutions' involvement in web3, NFT businesses, and the diversification of funding methods.

One salient example of these challenges highlighted by the White Paper is the potential risks that some NFT businesses may be considered gambling, which is prohibited under Japanese law; the White Paper suggests that the Government support industry associations in the web3 area to work together to develop guidelines to give industry participants clearer guidance.

### 5. Cabinet Office Intellectual Property Strategy Headquarters Releases "*Draft Discussion Paper on Legal Issues Surrounding Content in the Metaverse, etc.*"

The Cabinet Office Intellectual Property Strategy Headquarters published in April 2023 its "[\*Draft Discussion Paper on Legal Issues Surrounding Content in the Metaverse, etc.\*](#)," for public comment. This is a summary of the discussions held by the Public-Private Partnership Council, established in November 2022, in response to the Government's Intellectual Property Strategy Plan 2022 on the legal issues surrounding the metaverse. The issues are divided into four parts: (1) IP use and virtual object design that intersects real and virtual space, (2) handling of avatars'

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likenesses, etc., (3) rule formation and regulatory measures for virtual objects and actions between avatars, and (4) other international jurisdiction and applicable law matters.

It is expected that the relevant laws will be speedily amended based on the policies of the discussion paper, so it is important for companies that may conduct business related to the metaverse to stay abreast of the current status of the discussions. For example, as reported in a previous issue of our newsletter, a bill to amend the Unfair Competition Prevention Law to protect designs in virtual spaces and to prevent the imitation of product designs in virtual spaces has been submitted to the 2023 Ordinary Diet session. A wide range of issues have been raised, including, for example, whether the appearance of an avatar can be subject to portrait rights as it is linked to the personality of the operator.

In the future, the Public-Private Partnership Council plans to release guideline for each platform, operator and rights holder, based on the discussion found in the Discussion Paper. Private sector organisations will be required as necessary to reflect the ideas of the Discussion Paper in guidelines and contract templates set by the relevant organisations in the future.

### 6. The Liberal Democratic Party of Japan Releases its "AI White Paper"

In April 2023, the Project Team on the Evolution and Implementation of AIs of the Liberal Democratic Party of Japan's (LDP) Digital Society Promotion Headquarters published a proposal entitled "[AI White Paper: Japan's National Strategy in the New Era of AI](#)".

The White Paper states that the evolution and implementation of large language models (LLMs), including ChatGPT, are beginning to have a significant impact on society, and that a new national strategy for how Japan's society should respond is required. The White Paper makes policy recommendations on the following themes: (1) the need to formulate a new national AI strategy, (2) fostering and strengthening Japan's AI development capacity, (3) promoting thorough AI utilization in government, (4) encouraging and supporting AI utilization in the private sector, and (5) new approaches to AI regulations.

In particular, as an approach to AI regulations, the White Paper proposes that the government analyze the status of AI regulation in foreign countries such as the EU, the U.S., and China, and examine specific areas that may require legal and

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regulatory measures, such as (1) serious human rights violations, (2) national security, and (3) interference with the democratic process. In addition, the White Paper proposes that the government consider formulating guidelines for the interpretation of intellectual property laws regarding generative AI, in order to promote the progress of AI technology while preventing abusive use, and further develop the Japan's content industry.

Subsequently, on May 11, 2023, the government established the "AI Strategy Council" as a headquarter to discuss the direction of AI-related policies, and concrete discussions, including the legal system, are expected to continue.

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