

TECH, IP AND TELECOMS LAW UPDATES

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We are pleased to present the November issue (Vol.6) 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. AI Policy Discussion Latest Developments—AI Strategy Council releases Preliminary Draft of “AI Businesses Guidelines”

On September 8, 2023, the AI Strategy Council unveiled [a preliminary draft of new guidelines for AI businesses](#). The Japanese government has adopted an “agile governance” approach for AI, promoting flexible governance through non-binding

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guidance, entrusting self-regulation to the private sector, rather than imposing uniform regulations. While various ministries and agencies have previously published AI-related guidelines, these new guidelines aim to consolidate and streamline these recommendations for AI developers and users. The guidelines are expected to include transparency and accountability measures that AI-related businesses should adopt. Specific requirements, such as disclosure obligations and the potential need for external audits, are subject to further review and discussion.

On 30 October 2023, the G7 issued "[International Guiding Principles for Organizations Developing Advanced AI Systems](#)" and the "[International Code of Conduct for Organizations Developing Advanced AI Systems](#)" under the Hiroshima AI Process. The Hiroshima AI Process was established during the G7 Hiroshima Summit in May 2023 and has been advancing discussions aimed at creating an international framework for the use and regulation of generative AI. The issued guiding principles and code of conduct introduced are designed to promote safe, secure, and trustworthy AI and provide guidance for organizations developing and utilizing advanced AI systems. For example, these guiding principles and code of conduct include 11 principles including those aimed at ensuring transparency and enhancing accountability.

Government regulations concerning AI are rapidly evolving across various sectors. In addition to the aforementioned AI Strategy Council guidelines, the government also established the "[Intellectual Property Rights Examination Committee for the AI Era](#)" in October 2023 to address policy issues related to AI and intellectual property. This committee will explore topics such as the circumstances under which infringement on existing copyrights due to AI-generated content may be recognized. It is anticipated that key issues will be summarized within 2023, and further discussions will continue in 2024.

Regarding issues related to AI, discussions on policies for resolving challenges are ongoing and involve multiple stakeholders. Any business working in this, or adjacent, fields will be well served by investing the time to stay updated on the latest developments.

2. The Personal Information Protection Commission: Call for public comments on the "Draft Amended Ordinance for Enforcement of the Act on the Protection of Personal Information"

From September 14, 2023 to October 13, 2023, the Personal Information Protection Commission solicited opinions on the "[Draft Amended Ordinance for Enforcement of the Act on the Protection of Personal Information](#)" (only available in Japanese) and other related regulations.

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One of the major revisions relates to Reportable Incidents (Article 7 of the Ordinance for Enforcement of the Act on the Protection of Personal Information), which requires reporting of data breaches and notification of the individuals affected based on Article 26 of the Act on the Protection of Personal Information. The revision will include “personal information that has been obtained or is about to be obtained by the business operator handling personal information and is scheduled to be handled as personal data” under Article 7, Item 3 of the Ordinance. In 3-5-3-1 of the draft Amended Guidelines of the Act on the Protection of Personal Information (General Rules), one case requiring reporting has been added: “cases where the input page of the website of a business operator handling personal information has been tampered with by a third party, and the personal information entered on the page by the user has been transmitted to the third party, and the business operator has planned to enter the personal information entered on the page into a personal information database, etc.”. This suggests that the draft amended Ordinance and the draft amended Guidelines are intended to treat so-called web skimming (the act of altering an Electronic Commerce (“EC”) site to transmit personal information entered by a user not to the EC site operator, but to an attacker who has carried out the alteration) as a breach of personal data by the EC site operator.

3. NISC: Publication of “Cyber Security Related Laws and Regulations Q&A Handbook Ver 2.0”

On September 25, 2023, the National Center of Incident Readiness and Strategy for Cybersecurity of the Cabinet Secretariat (NISC) published its “[Cyber Security Related Laws and Regulations Q&A Handbook Ver 2.0](#)” (only available in Japanese). This Handbook was revised in light of changes in the environment surrounding cybersecurity, as well as the enactment and revision of related laws, regulations, and guidelines since Version 1.0 of the Handbook was released on March 2, 2020.

Cybersecurity threat have increased in number and severity in recent years, and in 2023, numerous security incidents occurred including ransomware attacks on cloud services with large numbers of users, and the Port of Nagoya cybersecurity breach.

While the importance of cybersecurity is increasing and the number of cybersecurity-related laws and regulations has been proportionally increasing, laws and regulations related to cybersecurity do not yet exist in a systematic manner in Japan, and cybersecurity-related provisions are currently scattered among individual laws and regulations.

This Handbook consists of 87 Q&As, and covers a wide range of cybersecurity-related

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laws and regulations as topics while providing simple explanations. Matters added to the Handbook include descriptions of initiatives related to critical infrastructure, responses to authorities in the event of a security incident, ransomware response, threat intelligence services, and more.

4. Implementation of Stealth Marketing Regulations and Revision of WOMJ Guidelines

Effective October 1, 2023, the Stealth Marketing Regulation have been implemented under the Act against Unjustifiable Premiums and Misleading Representations. These regulations, based on Article 5-3 of this Act, prohibits representations (i) made by a business operator in connection with transactions of goods or services supplied by the business operator, (ii) which is recognized to be difficult for ordinary consumers to distinguish as such, and which are specified as “representations that are difficult for ordinary consumers to distinguish as being those of a business operator” by a notification order (we covered these regulations in [Vol.1 of the January 2023](#) issue and [Vol.3 of the May 2023](#) issue of this Newsletter).

In line with this implementation, the WOM Marketing Association of Japan (“WOMJ”) has revised and published its [WOMJ Guidelines](#). The WOMJ Guidelines consist of the “WOMJ Guidelines Text and Commentary” and “WOMJ Guidelines FAQ”. They provide concrete examples of circumstances where a “relationship” is deemed to exist between the business doing marketing and the information provider and detailed methods for “disclosing the relationship” when such a relationship exists. Additionally, the guidelines also prohibit deceptive practices (acts of expressing “information emanating from the information provider” or “consumer behavior history” that differ from reality but are portrayed by the marketer as if they were real).

The WOMJ Guidelines are industry self-regulatory standards, and their direct application is limited to word-of-mouth marketing within Japan and online involving members of the WOMJ Association. However, given the increasing influence of digital word-of-mouth marketing as a PR method, such as posts by influencers on social media and ordinary consumer reviews, these guidelines, along with the Consumer Affairs Agency’s [Operational Standards](#) and [Replies to Public Comments](#), are an important resource for business looking to understand the specific application of the stealth marketing regulations.

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5. Japan Fair Trade Commission Publishes its “Investigation Report on the News Content Distribution”

On September 21, 2023, the Japan Fair Trade Commission (“JFTC”) released its [“Investigation Report on News Content Distribution”](#). This report scrutinizes transactions between news platform operators, such as news portals and internet search providers (“**Platform Operators**”), and news content providers, for example, through newspaper articles (“**Media Operators**”). It also explores how news content is utilized on these platforms and outlines preferred actions and potentially problematic actions under Japan's Antimonopoly Law.

The report is extensive, highlighting a variety of issues. For instance, it notes that the licensing fees, paid by Platform Operators to Media Operators for using their news content - averaging around 124 yen per 1,000 page views - merely equates to about a third of the advertising revenue Media Operators generate from their own websites, which is approximately 352 yen per 1,000 page views. It is recommended by the report that Platform Operators should disclose as much data as possible regarding the basis for setting these licensing fees, including any advertising revenue derived from the usage of said news content. The report also warns that if a Platform Operator independently changes the contract terms and determines an extremely low licensing fee, which is unfairly disadvantageous as compared to standard business practices, it might be seen as an abusive exploitation of a superior bargaining position, thereby posing a problem under Japan's Antimonopoly Law.

In February 2021, the JFTC had previously published its [“Final Report on the Transactions in the Digital Advertising Field”](#). Here it suggested that clearer transaction terms should be set and proper negotiations between parties should be conducted concerning licensing fees for the use of news content on news platforms and display rankings on search sites. However, because these issues have persisted, the JFTC decided to draft and release this new report. The JFTC asserted that they will contemplate further necessary actions, so market participant attention to this developing area remains crucial.

6. Recent court decisions force a re-evaluation of copyright compliance

In recent years, there has been an increase in the number of high-profile court decisions determining whether familiar use of copyrighted works constitutes copyright infringement. We have chosen a few highlights here to illustrate recent developments.

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First, in a case where scanned newspaper article data was posted on a company intranet without the permission of the newspaper company, the court awarded damages of 5,000 yen per article (IP High Court decision of June 8, 2023). Second, there was a case in which the first and second instance courts were divided on whether or not a retweet made on Twitter (now called “X”) by pasting a screenshot of a tweet of another person and adding a comment constituted a “citation” (IP High Court decision of April 13, 2023). Third, there was a case in which a web creator was convicted (2 years imprisonment, 5 years suspended, 1 million yen fine) of publishing “spoiler videos” of edited videos of popular video games without permission (Sendai District Court decision of September 7, 2023).

In the past, there have been a not insubstantial number of cases in which the use of third-party copyrighted works for internal business use was left unchecked due to insufficient awareness of copyright compliance. However, in recent years risks related to copyrights have increased both in quality and quantity, in part due to factors such as the spread of teleworking, the use of various digital services such as cloud computing and collaborative media software, and the rapid spread of AI.

Copyright infringement risks such as civil and criminal liability and reputational risk have grown, even in cases where the copyright holders themselves did not previously file lawsuits. Businesses need to reaffirm the importance of copyright compliance and ensure that their employees are aware of these risks.