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TECH, IP AND TELECOMS LAW UPDATES

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

2. AI Policy Discussion Latest Developments－Agency for Cultural Affairs releases Preliminary Draft of "Perspectives on AI and Copyright"

3. Public Consultation on "Evaluation on Transparency and Fairness of Specified Digital Platforms" by the Ministry of Economy, Trade and Industry

4. Ministry of Internal Affairs and Communications Releases its "Draft Third Summary from the Study Group on Platform Services"

5. Mobility Policy Discussion Latest Updates－the Mobility Working Group Meets and the Lifting of the Ban on Ride-Sharing

6. Ministry of Internal Affairs and Communications: Establishment of the "Study Group on How to Ensure Soundness of Information Distribution in Digital Space"

We are pleased to present the January issue (Vol.7) 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. Personal Information Protection Commission: "Consideration based on the So-Called Triennial Review of the Act on the Protection of Personal Information"

The Personal Information Protection Commission ("**PPC**") has released its

TECH, IP AND TELECOMS LAW UPDATES

"*Consideration based on the so-called Triennial Review of the Act on the Protection of Personal Information (APPI)*" as materials for the PPC meeting held on November 15, 2023. This document is based on the provisions of the APPI, which stipulates that the Act is to be reviewed every three years.

The document outlines three areas for consideration: (i) more substantial protection of the rights and interests of individuals, (ii) effective monitoring and supervision, and (iii) support for efforts to utilize data. Interviews with related organizations, etc. were scheduled to start in late November 2023, with the release of an "interim report" scheduled for the spring of 2024. Although no schedule has yet been released for subsequent years, based on past experience, we anticipate that an outline for the revision of the APPI will be released in 2024, with the draft bill to amend the APPI being submitted in 2025.

As part of this review and at the subsequent meetings of the PPC, interviews will be held for several organizations. The materials submitted by the organizations that are the subject of the interviews will be thereafter be made public as PPC meeting materials.

2. AI Policy Discussion Latest Developments ─ Agency for Cultural Affairs releases Preliminary Draft of "Perspectives on AI and Copyright"

There have been many notable developments regarding policies surrounding AI in the past few months. Particularly important were (i) the publication for public comment by the Agency for Cultural Affairs ("**ACA**") of its "Perspectives on AI and Copyright (Preliminary Draft)", (ii) the publication for public comment by the Ministry of Economy, Trade and Industry and the Ministry of Internal Affairs and Communication of an "AI Business Guideline (Draft)", and (iii) the G7's newly announced "Hiroshima AI Process Comprehensive Policy Framework".

Firstly, the "Perspectives on AI and Copyright (Preliminary Draft)" published by the ACA presents the agency's current view on various points under discussion in the AI and copyright space. The initial draft was first presented at a meeting of the Legal System Subcommittee of the Cultural Council Copyright Division on December 20, 2023. Subsequently, a revised version that incorporated the content of additional discussions was made public for public comment on January 23, 2024. This remains a preliminary draft at present and is expected to undergo changes. However, it delves into important issues, such as how to determine copyright infringement by AI in generating content, who would be the responsible party in respect of such infringement, and the interpretation of

TECH, IP AND TELECOMS LAW UPDATES

the copyright law's Article 30-4's copyright exceptions, which has often been relied upon for AI learning and development. Businesses using AI will be well served by keeping a close watch on these discussions.

Moreover, discussions pertaining to policies about intellectual property and AI are also progressing at the Intellectual Property Rights Review Committee in the Age of AI. This Committee, as of December 2023, has seen the presentation of draft discussion points encompassing the key issues considered at each stage of AI's learning, generation, and utilization for copyrights and other types of intellectual property. It is anticipated that, by March 2024, the Committee will present an interim summary that outlines the discussions held on the key points.

Additionally, the Ministry of Internal Affairs and Communication and Ministry of Economy, Trade, and Industry have published an "AI Business Guideline (Draft)," which was presented at the AI Strategy Council for discussion purposes. The Guideline combines and updates the existing AI-related guidelines issued by various ministries and develops a comprehensive guideline proposal for all businesses involved with AI. This proposal categorizes and delineates the responsibilities of the various AI stakeholders: developers, providers, and users. For example, the guideline mandates that AI developers, when dealing with training data that includes personal information or intellectual property rights, adhere to relevant laws and handle such information appropriately. This AI Business Guideline (Draft) has been open for public comment since January 19, 2024, and it is expected to be finalized by around March 2024.

Further, as part of its efforts to discuss the international governance of AI (the "Hiroshima AI Process") the G7 released the "Hiroshima AI Process Comprehensive Policy Framework" during its Digital and Technology Ministers Meeting in December 2023. This comprehensive policy framework includes the previously announced international guidelines and code of conduct for organizations developing advanced AI systems (which we covered in [Volume 6 of this newsletter](#) in November 2023) and the newly released "Hiroshima Process International Guideline for all AI Stakeholders." This guideline provides guidance not only for advanced AI system developers but also for the benefit of all AI stakeholders.

In Japan, policy discussions surrounding AI are currently advancing rapidly. In part due to the above, we anticipate substantial domestic developments in Japan's policies concerning AI.

TECH, IP AND TELECOMS LAW UPDATES

3. Public Consultation on the "Evaluation on Transparency and Fairness of Specified Digital Platforms" by the Ministry of Economy, Trade and Industry

On December 5, the Minister of Economy, Trade and Industry released a draft of its evaluation of the transparency and fairness of specified digital platform providers in three areas: (i) online shopping malls, (ii) application stores (or "app stores"), and (iii) digital advertising. This draft is in accordance with the Act on Improving Transparency and Fairness of Digital Platforms (TFDPA). It incorporates findings from reports submitted by providers, the consultation desk, and monitoring meetings, on which METI solicited opinions between December 5, 2023 to January 12, 2024. The evaluation of the handling of personal data acquired and used for targeted advertising in the digital advertising field was carried out in close collaboration with the Ministry of Internal Affairs and Communications ("**MIC**"), based on its monitoring results.

This draft evaluation acknowledges certain commendable practices by providers of the abovementioned platforms. However, it highlights ongoing shortcomings and inadequate explanations in areas needing improvement, particularly in the online shopping and app store sectors, now in their second year of evaluation. It also identifies various challenges in the digital advertising sector, which is undergoing its first year of assessment, and urges continued improvement in operations by designated digital platform providers, in line with the TFDPA requirements.

Furthermore, regarding app stores, this evaluation report indicates that new regulations are being considered to prevent monopolistic practices in app store operations and payment systems. The report refers to the "Competition Assessment of the Mobile Ecosystem Final Report" (Summary) by the Digital Market Competition Council, which pointed out that restrictions on alternative distribution channels for apps have created various competition issues.

4. Ministry of Internal Affairs and Communications Releases its "Draft Third Summary from the Study Group on Platform Services"

On December 23, 2023, the Ministry of Internal Affairs and Communications released the "Draft Third Summary from the Study Group on Platform Services" (the "**Summary**"), offering an overview of their research on regulations for platform operators to address the spread of illegal and harmful information (e.g., slander and libel) online.

The Summary suggests a policy to require platform operators to implement certain

measures to counteract posts that contain illegal and harmful information. This arises from circumstance where voluntary removal actions carried out by platform operators, according to their terms of service, are not adequately functioning. For instance, the measures include setting up a contact point in Japanese to process removal requests for such posts, and updating the applicant within approximately one week of receiving the request as to whether or not the post was taken down and the reasons for the decision. Moreover, to enhance transparency in the removal process by platform operators, they must devise and share guidelines for deletion, outlining the standards and procedures involved. The rules apply to platform operators that offer "services aimed at facilitating interactions among unspecified users above a certain size." Whether an operator falls within this category is determined based on various factors such as the number of users and posts.

This summary is drawn from the results of the "Working Group on Countermeasures against Illegal and Harmful Information such as Slander and Libel", established in December 2022 (as introduced in Volume 1 of this newsletter in January 2023). Public comments on this summary have been solicited (and closed on January 17, 2024), foreshadowing potential future regulatory amendments based on the results.

5. Mobility Policy Discussion Latest Updates － the Mobility Working Group Meets and the Lifting of the Ban on Ride-Sharing

On December 5, 2023, the Mobility Working Group, launched by the Digital Society Promotion Council in the Digital Agency, convened its inaugural meeting. The group identified and summarized the main issues and points for discussion in promoting the commercialization of technologies that enhance regional mobility such as automated driving, drones, and service robots. These key topics were categorized into five areas: (i) visualization of demand and business models, (ii) reducing the cost of introducing automated vehicles, (iii) improving the driving environment, (iv) cooperative control, and (v) the establishment of social rules. The tentatively named "*Mobility Roadmap 2024*" will be structured as a study framework including a timeline for addressing the issues raised and related discussion points. According to the "Discussion Points for the Social Implementation of Mobility Services Utilizing New Digital Technologies such as Automated Driving" document, also released the same day, a draft of the "*Mobility Roadmap 2024*" is expected to be completed by the end of March 2024, with the final version to follow in the spring. Among the major issues, the "establishment of social rules" outlined in point (v) has been discussed in a separately set up sub-working group studying the establishment of social rules for automated driving cars in the era of AI, and

the results will be compiled by May 2024.

In the realm of mobility, the "Interim Report on Digital Administrative and Financial Reform," released on December 20, 2023, announced a policy to lift the ban on "ride-sharing." According to this policy, starting from April 2024, ordinary drivers without a Class 2 driver's license will be permitted to use their own cars to transport people for a fee, although this is restricted to certain areas and time slots. The lifting of this ban is conditional upon cab operators managing the operation of ordinary drivers as the primary transport providers. By June of the same year, decisions will be made regarding whether to allow non-taxi operators such as app-based services to participate, as well as whether to remove the existing restrictions on regions and time slots.

6. Ministry of Internal Affairs and Communications: Establishment of the "Study Group on How to Ensure the Soundness of Information Distribution in Digital Space"

On November 7, 2023, the Ministry of Internal Affairs and Communications held a "Study Group on How to Ensure the Soundness of Information Distribution in Digital Space" to analyze the current approach to emerging issues and to discuss future policies and concrete measures aimed at ensuring such soundness. This is a pressing area for analysis as digital space is further expanding and deepening with the emergence of new technologies and services including generative AI and the metaverse, and because stakeholders in such digital spaces are becoming more diverse. The social impact of the generation and proliferation of sophisticated disinformation and misinformation by generative AI is becoming increasingly serious, and the importance of measures for the acquisition and use of data in the metaverse is also increasing. We anticipate progress in the near term on a comprehensive study on how to ensure the soundness of information distribution in the digital space, including responses from stakeholders to these issues. As at the end of December 2023, this Study Group has already met five times, and it is anticipated that discussions aimed at compiling a summary of existing and emerging issues will intensify in early 2024.