

## TECH, IP AND TELECOMS LAW UPDATES

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Atsushi Okada  
Partner  
[atsushi.okada@mhm-global.com](mailto:atsushi.okada@mhm-global.com)

Daisuke Tsuta  
Counsel  
[daisuke.tsuta@mhm-global.com](mailto:daisuke.tsuta@mhm-global.com)

Colin Trehearne  
Foreign Law Counsel  
[colin.trehearne@mhm-global.com](mailto:colin.trehearne@mhm-global.com)

Kaei Ro  
Senior Associate  
[kaei.ro@mhm-global.com](mailto:kaei.ro@mhm-global.com)

Kohei Wachi  
Senior Associate  
[kohei.wachi@mhm-global.com](mailto:kohei.wachi@mhm-global.com)

Masumi Sato  
Associate  
[masumi.sato@mhm-global.com](mailto:masumi.sato@mhm-global.com)

Hiromu Nagira  
Associate  
[hiromu.nagira@mhm-global.com](mailto:hiromu.nagira@mhm-global.com)

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We are pleased to present the May issue (Vol.9) 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 Updates including the “AI Guidelines for Business Version 1.0,” and the “AI White Paper”

The last two months have seen several important updates regarding policies on AI in Japan.

First, the Ministry of Economy, Trade and Industry (“**METI**”), along with the Ministry of Internal Affairs and Communications, published the “[AI Guidelines for Business \(Version 1.0\)](#)” dated April 19, 2024. As we mentioned in the [the March 2024 issue of this newsletter \(Vol.8\)](#) of our newsletter, these guidelines target all entities involved in the development,

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provision, and use of AI in their business activities. They provide a basic framework for necessary initiatives when utilizing AI, tailored to developers, providers, and users respectively. Following public comments, the final version was decided upon by the AI Strategy Council and has now been released. Additionally, updates to guidelines related to AI are being carried out by various ministries and agencies. For instance, the [“Handbook for the Protection of Confidential Information”](#) (only available in Japanese) has been updated to include cautions against inadvertent inputs into generative AI that could lead to information leaks. Furthermore, the [guidelines on shared data with limited access](#) now mention that AI training datasets and trained models may also be included as shared data with limited access, which refers to data that is only disclosed within a certain scope and is protected under the Unfair Competition Prevention Act when certain requirements are met.

Second, there have been new developments in the government’s policy on AI regulation. In April 2024, the LDP Headquarters for the Promotion of Digital Society released the [“AI White Paper 2024.”](#) The white paper states that in unpredictable times, Japan should aim to become “the most AI-friendly country in the world” while enhancing AI competitiveness and ensuring safety. Although Japan has not had comprehensive laws regulating AI to date, the white paper argues that regulation does not necessarily conflict with innovation. Instead, it can promote utilization by creating a safe and secure environment. It indicates that minimally necessary regulation (i.e. hard law rather than soft law or codes of conduct) should be considered for AI that involves extremely high risks. The AI Strategy Council meeting, held on May 22, 2024, discussed the future direction and development of such potential AI regulations.

As such, AI-related policies are evolving in line with technological advancements and both are developing at a fast clip; AI business leaders must pay attention to these trends.

### 2. Japan Fair Trade Commission: Bill Concerning the Promotion of Competition in Relation to Specified Software Used in Smartphones

On April 26, 2024, the Cabinet approved the “Bill Concerning the Promotion of Competition in Relation to Specified Software Used in Smartphones” submitted by the Japan Fair Trade Commission. This Bill is based on the [“Competition Assessment Final Report on Mobile Ecosystem”](#) released by the Digital Market Competition Council in June 2023 (in respect of which see also [the July 2023 issue of this newsletter \(Vol.4\)](#)).

The purpose of this bill is based on the facts that (1) the providers of specific software particularly necessary for smartphone use (mobile OS, app stores, browsers, search engines, etc.) are oligopolistic with a specific few leading operators, and that (2) it is difficult to correct this situation voluntarily through market functions such as new

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competitor entry. The goal is to create an environment where innovation by various entities is stimulated through competition while also, among other things, ensuring security and privacy, and to create an environment where consumers can choose from a wide variety of services generated by such innovation.

The bill designates businesses that provide specified software and whose business exceeds a certain scale as regulated businesses, and it requires the designated businesses to prohibit certain acts and obliges them to take certain measures. For example, pursuant to the bill such businesses must not prevent other businesses from providing app stores (but not so-called “side-loading,” which allows apps to be downloaded directly from websites), and they must not prevent the use of other billing systems.

### 3. Amendments to the Unfair Competition Prevention Act and the Trademark Act Take Effect

As of April 1, 2024, the amendments to the Trademark Act and the Unfair Competition Prevention Act, as outlined in the [“Law Partially Amending the Unfair Competition Prevention Act, etc. \(Law No.51\)”](#) enacted on June 14, 2023, took effect. As discussed in [the July 2023 issue of this newsletter \(Vol.4\)](#), this law has three main objectives: (1) enhancing the protection of brands and designs in response to the diversification of business activities due to digitalization, (2) refining intellectual property procedures in response to the COVID-19 pandemic and digitalization, and (3) improving systems related to international business development. In one move this Act revises the Unfair Competition Prevention Act, the Trademark Act, the Design Act, the Patent Act, the Utility Model Act, and the Act on Special Measures Concerning Industrial Property Rights.

These changes include that (1) the amendments to the Trademark Act introduce a system that allows a trademark similar to a previously registered trademark to be registered concurrently, provided that the owner of the previously registered trademark consents and there is no risk of consumer confusion, and (2) it is now possible under the Unfair Competition Prevention Act to demand an injunction against the imitation of product forms in the digital space as acts of unfair competition. In addition, (3) in the case of services that share big data with other companies, even if the data is managed confidentially, it is now protected as falling within the category of shared data with limited access.

In line with the 2023 amendment of the Unfair Competition Prevention Act, METI published an [“Article-by-Article Explanation of the Unfair Competition Prevention Act: Enforcement Date: April 1, 2024”](#). This detailed commentary clearly states that the term “goods” includes not only physical goods but also intangible goods that are subject to

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market distribution. This was a point of discussion at the Council and was addressed by clarifying the interpretation in the commentary rather than amending the law. The commentary provides a comprehensive understanding of the 2023 amendment and the interpretation of the law, and it is an essential reference for parties wishing to better understand this area.

#### 4. The Governing Liberal Democratic Party of Japan Releases its “web3 White Paper 2024”

In April 2024, the governing Liberal Democratic Party of Japan’s Digital Society Promotion Headquarters published a proposal entitled “[The web3 White Paper 2024 - A New Era Where Technology Forms the Foundation of Society](#)” (the “White Paper”). The White Paper outlines a range of issues and policies aimed at integrating the web3 ecosystem into Japan’s national development and fostering the growth of blockchain technology. It also addresses a broad spectrum of issues and identifies the following 11 themes as immediate priorities in advancing web3:

- (1) The promotion of cross-sectional studies with other fields, such as AI, with a view to realizing “Society 5.0”, being Japan’s concept of a future society of integrated technologies brought by the fourth industrial revolution;
- (2) Japan’s contribution to international rule-making;
- (3) Studying the promotion of Verifiable Credentials and Decentralized Identifiers, and Digital Identity Wallets;
- (4) The diversification of investment vehicles and schemes for blockchain-related businesses;
- (5) Tax Reforms;
- (6) Ensuring opportunities for accounting audits of companies issuing crypto assets;
- (7) Further measures to promote the use of decentralized autonomous organizations;
- (8) Digitalization of payment and investment instruments;
- (9) Clarification of criteria for financial institutions’ entry into web3 businesses and the appropriate operations of regulations;
- (10) Non-fungible token businesses; and
- (11) Licenses appropriate to web3 business.

The analysis and recommendations are diverse. For example, in relation to the promotion of cross-sectional studies in support of Society 5.0, the report advocates for the promotion of a cross-agency study to explore the value of and challenges presented by areas where different fields intersect, including in respect of web3 and AI. Elsewhere, in relation to licenses appropriate to web3 business, the report recommends the

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establishment of licenses that would enable intermediation between users and various sectors such as cryptocurrency asset exchanges and electronic payment transactions. Finally, the White Paper provides updates on the progress of measures discussed in previous proposals, including the “[web3 White Paper 2023](#)” published in April 2023, about which we published in [the May 2023 issue of this newsletter \(Vol.3\)](#).

### 5. Personal Information Protection Commission Issues Administrative Guidance in a Ransomware Case

On March 25, 2024, the Personal Information Protection Commission (“PPC”) issued [administrative guidance](#) to MKSystem Corporation. In this case, a server of a cloud service provider (MKSystem), which had a high market share as a social insurance and human resource management support system for labor and social security attorneys, was illegally accessed via ransomware. Also on the same day, the PPC took this incident as an opportunity to publish for general business operators using cloud services its “[Points to Keep in Mind When a Cloud Service Provider is a Business Handling Personal Information under the Act on the Protection of Personal Information \(Alert\)](#)”.

When a business uses cloud services provided by an external vendor for the processing of personal data, an issue often arises: is the service provider entrusted with the handling of personal data by the user or does the service provider falls under the so-called “cloud exception” (see PPC’s Q&A 7-53, available at [https://www.ppc.go.jp/files/pdf/2403\\_APPI\\_QA.pdf](https://www.ppc.go.jp/files/pdf/2403_APPI_QA.pdf)) and thereby is deemed as not handling such personal data. In this regard, the PPC found that MKSystem, a provider of cloud services, handled personal data (i.e., finding that it is an entrusted party), and the PPC also indicated some factors to be considered in it reaching this finding.

Furthermore, the PPC stated that cloud service users must also supervise their contractors (cloud service providers) in accordance with Article 25 of the Act on the Protection of Personal Information, and provided specific points to keep in mind regarding the implementation of such supervision.

In the case of MKSystem, and also in general in Japan, there are cases where users are not well aware that they are entrusting the handling of personal data to a cloud service provider, and as a result, the supervision of the entrusted party may be insufficient. In recent years, there has been an increase in the number of cases where guidance and recommendations by the PPC have been issued as a result of unauthorized access or data removal by employees; we recommend readers to reconfirm your company’s system for checking and managing contractors in light of this alert.