

Outline of New GOJ Privacy Framework

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Basic Outline

Proposed revisions to Personal Information Privacy Law released June 24 by IT Strategy HQ; 30-day public comment period ends July 24; legislation to be presented in 2015 Diet session

Revisions aimed at eliminating the “grey zone” with regard to appropriate uses of personal information that have slowed innovative uses of data in Japan

Creation of independent supervisory authority to include existing oversight of national ID system

Involvement of multistakeholder community in developing codes of conduct in cooperation with new authority, which will monitor and enforce compliance

Reliance on third party certification bodies to provide oversight of cross-border data transfers

Emphasis on establishing clear definition and rules with regard to personal data and facilitating use of “de-identified” data; procedures for disclosure and deletion of data

Need for a Flexible, Dynamic Framework

Given the speed of technological innovation and the appearance of new business modes to exploit them, need for a flexible and dynamic rule making process

Limits to applicability of laws, regulations and guidelines

Encourage private initiative in developing “voluntary” approaches

Parallel need for an independent and fair enforcement body that can certify and enforce voluntary arrangements developed by private initiative

Approaches must also be harmonized with international practices

Fundamental Legal Framework (I)

System will be based on use of “de-identified” data, allowing for data usage without specific individual consent – designed to permit repurposing and transfers to third parties without undue business compliance burdens

Information that can be linked to a specific individual, e.g. fingerprints and facial recognition, or information that might lead to discrimination based on race, religion, etc will be regarded as “sensitive” data and its use prohibited – but with exceptions for emergency situations.

Restrictions on use of medical data will be relaxed – particularly where the benefits of “utilization” are important for public

In order to maintain flexibility, the new law will set general principles with the substance to be defined through regulations, guidelines and voluntary codes.

Fundamental Legal Framework (II)

A “third party authority” will be established to enforce both regulations and private voluntary codes; the new authority will be added to the existing responsibilities of the “personal information protection commission, which currently oversees the national ID system; the new body will have responsibility for the oversight of personal data, the issuing of administrative guidance, dispute resolution, promotion of greater utilization of data, oversight of accredited organizations and international cooperation.

Major change: recognition of a role for the multistakeholder community in setting rules for privacy, which will be overseen and enforced by government power; this is a major departure from the EU model that sees privacy as an administrative issue not a commercial challenge; aligns Japan with the US approach that gives precedence to the market and emphasized the need for flexibility in supporting new technologies and business models.

Specific Powers of New Third Party Authority

Oversight over activities of data operators in line with existing powers held by various Ministries under current law (e.g. guidance, setting of reporting requirements, warnings, orders)

New authority to conduct investigations

Power to approve private voluntary codes

Right to oversee the activities of private certification agencies with regard to cross-border data transfers

Penalties will be established after further study

Additional study required with regard to utilization of government data; additional consideration required re legal status and activities with respect to Ministries

Period of transition required before new authority has the personnel, budget and experience to oversee privacy independently so cooperation of existing ministries and local governments will be essential

Key Reforms

Under current law, personal data cannot be passed to a third party or repurposed without express consent. Law will be revised to permit transfer when data has been de-identified and when risk of infringement is low. Government standards will not be established for “processing” data, rather they will be arrived at through private consultations and sharing of “best practices.”

A process will be created for “disclosure” and “deletion” of data, maintaining an appropriate balance between individual rights and business compliance costs

Commitment to maximize the availability of government data at national and local levels.

Extra territorial applicability of law outside Japan to be reviewed, with emphasis on sharing information with foreign based operators

Transfers of data will be based on contracts between private parties, but require compliance with terms established by third party accreditation bodies.

Exemptions from privacy restrictions for items like CD-ROM and phone directories as well as social groups; relax administrative regulations for areas like academic research

Business Community Reaction (1)

Strongly support Working Group objective of removing barriers to the commercial use of personal data

Welcome call for a “dynamic” approach to protecting privacy, based on recognition of limits in effectiveness of laws and regulations in dealing with a dynamic business environment

Recommend including assessment of actual risk of harm in assessing specific privacy concerns and implementation of protective measures commensurate with the risk.

Pleased at prominent role given multistakeholder community in developing “codes of conduct;” key to success will be involving all relevant stakeholders and measures to support capacity building

Key to success of the third party authority will be its receiving the budget, personnel and mandate required to oversee privacy policy across the government; while close collaboration with existing ministries will be important, the new body needs independence and authority to end currently fragmented privacy policies and to provide transparent and consistent guidance for consumers, business and foreign governments.

Business Community Reaction (II)

Welcome commitment to deal with the “grey zone;” however, concerned how “quasi” personal data will be treated; believe that careful attention is required here so as not to introduce new business compliance costs.

Urge careful attention to any new rules specifying procedures of obtaining “consumer consent;” believe that this should be commensurate with the sensitivity of the data; see this as an early area for input from the multistakeholder community.

Similarly, a balanced approach in responding to requests for data disclosure or deletion is desirable; further discussion is clearly required before establishing any new rights for individuals to file a civil suit to seek disclosure or deletion of personal information.

Requirement for new third party authority to work closely with the newly proposed Cybersecurity Center to develop a consolidated approach to cyber incidents, eliminating overlapping mandates of government authorities in this area.

Business Community Reaction (III)

Welcome recommendation from Working Group to establish an accountability based transfer regime based on third party certification of appropriate guidelines for cross-border data transfers; see this as key element in Japan working with US to strengthen APEC privacy process.

Pleased with government pledge to align data protection regime with international best practices; firm basis for US and Japan to use bilateral US-Japan Internet Economy Dialogue as mechanism for joint approaches to third countries.

Urge Japanese government to seek constructive solutions to problems in data protection and to avoid the imposition of excessive fines; believe that a notice and hearing process in cases of alleged violations is essential to protecting the interests of both consumers and service providers.

Remaining Concerns

Definitions of quasi personal data and data deemed “sensitive.”

The mechanics for involving the multistakeholder community in rule-making

Details of how the new third party authority will working existing ministries

The framework for cooperation between the “third party authority” and the new Cybersecurity Center

Procedures for how consumer consent (including opt-out) may be obtained, how requests for disclosures and deletions will be handled; and how “profiling” might be regulated

Rules for accrediting third party bodies to oversee cross-border transfers of data

Development of an equitable dispute settlement mechanism with attention to assuring due process and penalties proportionate to the nature of the offense.

Final Word

We will pay close attention as to how these concerns are addressed before and subsequent to the legislative adoption of this new privacy framework.

Reassured that by the recommendation and discussion in the Working Group report that changes to Japan's privacy framework are on the right course.

Strongly urge that reforms to the current administrative framework for privacy in Japan take the least restrictive approach, respect due process, limit compliance costs and integrate the views of the multistakeholder community into the development and implementation of new rules.