

Japan's Legislature to Debate New Privacy Bill

Report by Rob Veeder

DESPITE ITS REPUTATION AS A NATION that highly values personal privacy, Japan has generally taken a self-regulatory approach to protecting personal data in its commercial sector – much as in the US.

That may be changing. A series of presentations at a recent conference sponsored by the organisation *Privacy & American Business* highlighted some recent Japanese privacy initiatives.

Dr. Alan Westin, President of the Center for Social and Legal Research, opened the session by releasing the results of a national Japanese consumer privacy survey. The survey tracked general attitudes about privacy as well as attitudes towards on-line activities. In general, the survey found that Japanese consumers are quite privacy savvy. They know about privacy issues and they are concerned about how their personal information is being used and protected. Perhaps the most telling finding for businesses was that large majorities of Japanese consumers think it essential that companies have clear privacy policies and follow them. Moreover, only one in four consumers thinks the government is doing an adequate job of protecting consumer privacy.

This apparent lack of confidence in the effectiveness of government oversight might be expected, given that Japanese data protection law is aimed mostly at government bodies. Shuhei Kishimoto, Director of Information Systems in Japan's Ministry of Economy, Trade and Industry, (formerly the Ministry of International Trade and Industry, MITI) traced the history of personal data protection in Japan. Its aim was to achieve an appropriate balance between data usage and personal data protection. In

general, the government has been content to rely on industry to police its own activities, albeit with governmental "encouragement". Such encouragement has taken the form of government-drafted or sponsored "guidelines" which formulate data protection standards and fair information practices for particular sectors.

Thus, in 1989, MITI issued *Guidelines for the Protection of Computer-Processed Personal Data in the Private Sector*. Similarly, in 1991, the Ministry of Post and Telecommunications issued general data protection guidelines for the telecommunications industry and followed those with more specific guidelines for sub-sectors such as caller identification services. While not issuing guidance itself, the Ministry of Finance was influential in encouraging the adoption of voluntary Guidelines on the Protection of Personal Data for Financial Institutions, which were developed by a private sector entity – the Centre for Financial Industry Information Systems.

PUBLIC SECTOR INITIATIVES

In the public sector, Japan has been more energetic. In 1988, the central government enacted the *Act for the Protection of Computer Processed Personal Data Held by National Administrative Agencies* (PL&B May '99 p.5). Many local governments have also enacted ordinances aimed at protecting personal data in their possession. By April 2000, 1,748 out of

3,300 local governments had issued such ordinances.

However, perhaps as a consequence of the European Union approach to data protection – or in reaction to a growing concern among Japanese citizens about how well their personal data was being protected – it became clear at the national level that more was needed. Accordingly, in 1999 a working group was set up under the chairmanship of Dr. Masao Horibe, Professor of Law at Chuo University Law School and one of the leading privacy experts in Japan, to examine the Japanese approach to personal data protection systems. The report triggered the establishment of a committee of experts that wrote a proposal for a comprehensive data protection law to cover both the private and public sectors, including online and offline activities. It will be considered by the Diet this spring.

The new law, if enacted, is not intended to completely replace the current self-regulatory approach to private sector data protection. As Mr. Kishimoto noted, the proposed comprehensive legislation is intended to provide a framework to enhance and promote businesses' voluntary approaches.

PROPOSED LAW

The first section of the proposed law, the "Purpose" section, states that the law aims to protect the rights of individuals by laying out basic rules on handling personal data. The following

“Basic Principles” section essentially adopts standard fair information practices: use limitation; collection limitation; accuracy measures; security requirements and transparency requirements. The next three sections lay out requirements for the covered entities: companies, the national government and local governments. The obligations placed on the private sector are extensive. In addition to complying with the basic principles, companies are required to have systems in place to administer their use of personal data. They must adopt limitations on disclosures to third parties and suspend their use of data if the data subject requests. They must permit data subjects to see and correct data about themselves and publicly identify who is responsible for overseeing their data protection

administration. They must also have a complaints resolution process.

NEW PROPOSALS REPRESENT A SEA CHANGE

There appears to be a new requirement that the national government take the lead in developing data protection guidelines. The proposal gives local government authorities responsibility for encouraging companies and residents in their region to comply with data protection requirements. It also makes them responsible for acting as a complaints resolution intermediary.

Despite Mr. Kishimoto’s assertion that the law is intended to regularise and enhance the government’s current approach to the private sector, it is clear that the proposed regulatory scheme, even if implemented by the companies themselves, represents a

sea change. Moreover, a set of statutory requirements provides something for the government to audit and is far different from the current situation.

Neither Mr. Kishimoto nor Dr. Horibe offered a timetable, nor could say what a final version might look like. Both suggested very strongly that comprehensive legislation was quite likely, and sooner rather than later.



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