

An Interview with Dr. Taro Komukai, Executive Director and Senior Consultant, InfoCom Research, Japan

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Abstract:

Japan is undergoing a significant transformation in its approach to data privacy and security protection. Dr. Komukai explains the key elements of the framework for personal data protection in Japan, recent developments on this front, similarity and differences of the Japanese framework with those of the European Union and the United States, the influence of the Japanese culture on the regulatory framework, and key lessons for other economies from Japan's experience in developing a regulatory framework to protect privacy online.

Keywords: Japan | data protection | online privacy

Article:

Dr. Taro Komukai is executive director and senior consultant at InfoCom Research in Tokyo, Japan. He received his Ph.D. in Law from Chuo University in 2007. He is also a visiting associate professor in the Graduate School of Information and Telecommunications Studies at Waseda University in Tokyo. His research interests include privacy, information security, secrecy of communications, and other issues associated with digitalization and the Internet. He was a member of the Personal Data Working Group under the IT Integration Forum, Ministry of Economy, Trade and Industry (2012–2013), and the Working Group on Personal Data Protection relating to the National ID of the Social Security and Tax, Cabinet Secretariat, Government of Japan (2011–2012).

Journal of Global Information Technology Management (JGITM): What are the key elements of the framework for personal data protection in Japan?

Komukai: The framework for personal data protection in Japan has been developed by a multilevel approach to protect the rights and interests of individuals, and the current legal framework is rather complicated.

We have a basic law about personal data protection in Japan, the Personal Data Protection Law of 2003. This law establishes rules to protect personal data in Japan and obligation on the enterprises that process personal data. As for the public sector, there are two other acts, the Act on the Protection of Personal Information Held by Administrative Organs, and the Act on Administrative Agencies.

We don't have any privacy commission or commissioner. Competent Ministers supervise the entities. There are 37 Guidelines for each industry based on Article 8 of the Personal Data Protection Law. And more than 2,000 ordinances by local government and municipalities. These guidelines and local rules include different regulations each other. A social security and tax number system is going to be introduced and an independent supervisory authority for the number system will be established in 2014. This would be the first independent authority of personal data protection in Japan.

The current legal framework for personal data protection in Japan is characterized by these labyrinthine legislations. I believe it should be integrated into simpler framework in the next reform.

JGITM: What are some of the recent developments in Japan to protect privacy online?

Komukai: There have been some study groups and working groups that discuss the protection on privacy online or new situation such like big data. I think following three are especially important outputs.

- Official Announcement of Report from Research Society for Use and Circulation of Personal Data, June 12, 2013, Ministry of Internal Affairs and Communications.
- Smartphone Privacy Initiative: New Age Innovation by Appropriate Handling of User Information and Improvement of Literacy, August 7, 2012, Ministry of Internal Affairs and Communications.
- Personal Data Working Group under the IT Integration Forum, May 10, 2013, Ministry of Economy, Trade and Industry.

The MIC report proposed seven principles for the personal data protection: 1) Ensuring Transparency, 2) Securing the Opportunity of User Participation, 3) Respecting for Context in which Data Collected, 4) Minimum Collection, 5) Ensuring Data Collection through Proper Means, 6) Ensuring Proper Management of User Information, 7) Privacy by Design.

The way of de-identification has also been a topic of these discussions. MIC study group worked out a proposal that requires de-identification of data when they are transferred as not personal data. It is similar to the standard of FTC Privacy Report.

JGITM: What are the important ways in which the Japanese data protection policy is similar to and different from those of the EU and the US?

Komukai: In EU, Data Protection is considered to be directly required from fundamental human right of privacy. And I think what they think essential is to reflect the will of the person on the processing of personal data. Obtaining consent from the person or providing opt-in option will be important there.

On the other hand, the US regulation on consumer privacy is based on the concept of fair competition with consumer's choice. This concept will likely to require the opt-out option with consumer access to accurate information. If the opt-out or information for the consumers is not sufficient, it could be a subject for enforcement as a deceitful action. EU and the US have different basic concepts for the personal data protection.

But when it comes to the actual requirement on either side, the difference could be small because both approaches require the respect for the will of individuals. The approach in the US is very unique and few countries follow this idea. But I think it will be possible to go well with the requirement of the US regulation for many countries. As for EU, the regulation to be made in the near future will be the key. If the requirement to obtain consent comes to be too strict and strong, many countries might be unable to meet the requirement.

I think Japanese data protection scheme is different from that of EU and US in two points. One is lack of the privacy commissioner or some other type of authority that is responsible for the rule making and enforcement. The other is that there is no provision to ensure the entities make good the appropriate purpose of use.

The Personal Data Protection Law in Japan requires entities only to publicize the purpose of use. It doesn't require that entities get consent of the person like the regulation in EU. And there is no provision on the deceitful action in use of personal data like the regulation in the US. Therefore, even when many people think a particular purpose of use is unacceptable, the use cannot be stopped on the ground that the purpose is not appropriate. These two points should be discussed for the reform.

JGITM: What are key lessons for other economies from Japan's experience in developing a regulatory framework to protect privacy online?

Komukai: There are many approaches of self-regulation for data protection in Japan. The Smartphone Privacy Initiative is one of the approaches for the privacy online. The initiative focused on the data protection associated with smart phones and proposed six principles: 1) Ensuring Transparency, 2) Securing the Opportunity of User Participation, 3) Ensuring Data Collection through Proper Means, 4) Ensuring Proper Management of User Information, 5) Properly Handling Complaints and Requests for Advice, 6) Privacy by Design.

JGITM: How is the Japanese regulatory framework to protect privacy online affected by the Japanese culture?

Komukai: There are 37 guidelines for each industry based on the personal data protection law and other independent guidelines or recommendations. Such recommendation lead by government authority has two aspects. In appearance, the authority is just recommending like a privacy advocate. On the other hand, some people might think a government recommendation could function as a de-facto guideline for enforcement by the authority. If the guideline says the entity can use personal information in a particular way, the usage won't be subject to enforcement. Curiously, Japanese government rarely makes enforcements on personal data processing, so I think the recommendations and guidelines from Japanese government cannot be regarded as enforceable guidelines.

In the case of FTC, a recommendation by FTC goes hand in hand with its enforcement. As for the de-identification, if a company does take steps to re-identify the data that it says de-identified, it could be illegal under Section 5 of the FTC Act.

Still, Japanese enterprises will positively comply with the guidelines by government authorities even though enforcement is not anticipated. I think that the guidelines work because they were developed by the discussion by multi stakeholders and it might have relevance to the Japanese culture.

JGITM: Are there any other important things about Japan's approach to personal data protection that you would like our readers to know?

Komukai: Recently, Japanese government released a policy to conduct the regulation reform to promote the use of personal data:

The Japanese government will immediately establish a new study group under the IT Strategic Headquarters and start the discussion to clarify the rule about making the best use of personal data with consideration for privacy and data protection, reform of data protection guidelines, standardization of the way to obtain user's consent. The study group will also make a reform policy and roadmap including establishment of the third party authority and new means of enforcement within this year. (Cabinet decision "Declaration to Create the World's most Advanced State for IT Utilization," June 14, 2013)

The study group started discussion on September 2, 2013 and the reform is currently in progress.

I would like to add something about the effort for personal data protection by enterprises in Japan. Most Japanese enterprises work on personal data protection diligently even if there is no enforcement for negligence. I believe that the personal data protection by the enterprises in Japan is comparatively high level.

Author information

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