Japan proposes to add following new discussion points as written in red text below. Please also consider the comments to each point.

Issue 2: Patentable Subject Matter and Patentability Guidelines

8. Computer-assisted inventions and their treatment under patent laws have been the subject of lengthy discussions in many countries around the world. In the case of AI-generated or -assisted inventions, and inventions containing AI technologies:

…

(iv) Should specific provisions be introduced for inventions containing AI technologies, such as a trained model, or should such inventions be treated in the same way as other inventions without AI technologies?

Issue 3: Inventive Step or Non-Obviousness

9. A condition of…

(v) When considering the inventive step of inventions containing AI technologies, is there any specific things which should be taken into account? For example, does an invention of mere a systemization of manually-operated tasks using AI involve inventive step?

Issue 4: Disclusure

10. A fundamental goal…

(iv) How should data used to train an algorithm be treated for the purposes of disclosure? Should the data used to train an algorithm be disclosed or described in the patent application? How about an algorithm itself?

Commented [MOFA1]: In the current discussion paper, inventions that partly contains AI in its composition are not included as discussion points while AI generated inventions and AI assisted inventions are discussed in the paper.

Japan proposes to discuss inventions containing AI technologies and subsequent discussion points in Issue 2 to 4.

Commented [MOFA2]: Algorithm itself can be a discussion point for disclosure requirement.

Issue 6: Authorship and Ownership

12. AI applications are…

(i)bis   What kind of human involvement, and how much of it, should be required for user of AI to be considered as an author of AI-generated works.

(iv)   In the case that AI-generated works are not the object of the copyright (or only limited protection can be given), it may happen that the person who generates the works by AI claims that the works are his/her own by concealing the fact that the works are generated by AI. Should there be a system to prevent such a guise?

Issue7: Infringement and Exceptions

13bis. When using the data subsisting in copyright works without authorization for machine learning is NOT considered to constitute an infringement of copyright, following points can be discussed.

(i) If AI autonomously generates contents similar to the original works in the learning data, should the generation be considered to constitute an infringement of copyright? And, if so, who will be considered as an infringer (The user of AI who generates contents? Or the producer of AI?)?

(ii) If AI autonomously generates contents similar to the original works in the learning data and someone distributes the generated contents, should the distribution be considered to constitute an infringement of copyright? And, if so, who will be considered as an infringer? (The distributer of the generated contents? Or the producer of AI?)?

Commented [MOFA3]: Standard to determine whether a user of AI becomes an author of AI-generated works should be discussed.

Commented [MOFA4]: Abuse of right based on AI-generated works should be discussed.
This assumption leads the situation that AI-generated works, which seems to be produced by human, will be brought to the market.
Because it is difficult to prove that the AI-generated works are not works by human, someone may claim infringement based on such AI-generated works as his/her own works against other works created by human.

Commented [MOFA5]: In what types of exploitation of works constitute infringement of copyright of original works should be discussed.