

QUESTIONNAIRE ON ARTIFICIAL INTELLIGENCE POLICIES

BACKGROUND

Artificial Intelligence (AI) has become a strategic priority for many governments across the globe. In addition, data are a critical component of AI since AI applications rely upon machine learning techniques that use data for training and validation.

As well as AI capacity building, education and regulatory measures, there is a question whether the established intellectual property (IP) system should be modified to in response to AI developments. WIPO has been requested by Member States to provide a forum for discussion of AI and IP Policy, which also includes data. WIPO has therefore started an open conversation on AI/data and IP, including a draft issues paper¹, and is planning to continue the conversation in Geneva on May 11-12, 2020.

REQUEST FOR INFORMATION

In order to aid this discussion, WIPO is seeking to collate country/regional information regarding strategies, frameworks and legislation of relevance to AI/data and IP.

This questionnaire aims at taking stock of the different national and regional landscapes of legislation and instruments applicable to AI/data and IP.

A summary of the answers provided in this questionnaire will be used to create a publically available resource to facilitate information sharing. Personal information provided, such as contact details of individual persons, will not be made publically available but may be used solely by the Division of AI Policy to share the results of the questionnaire and to gather further information in the future.

Please send the completed questionnaire, including null responses, to ai2ip@wipo.int.

¹ https://www.wipo.int/about-ip/en/artificial_intelligence/call_for_comments/index.html

NATIONAL AI STRATEGIES

1. Does your country have a national/regional AI strategy in place?

- No
- Yes
- Draft/proposed only
- Do not know

2. If so, does the AI strategy identified in Q1 consider IP?

- No
- Yes
- Draft/proposed only
- Do not know

3. Please provide details of the AI strategy identified in Q1 (name, short description, year, URL, responsible organization name and, if relevant, its relation to IP).

Japan formulated the national AI strategy titled "*AI Strategy 2019 AI for Everyone: People, Industries, Regions and Governments (2019)*", as the Japan Integrated Innovation Strategy Promotion Council Decision.

https://www.kantei.go.jp/jp/singi/ai_senryaku/pdf/aistratagy2019en.pdf

The Strategy above states initiatives that the government should work on in terms of the IP system as follows.

- Identification of problems (handling of intellectual property, administrative procedures, etc.) in AI research and development and presentation of solutions to those problems (p29)
- Examination towards realization of Intellectual Property systems, etc. to take advantage of Japan's strengths in accordance with the initiatives of this Strategy (p60)

AI AND IP LEGISLATIVE MEASURES

4. Does your country have any measures/provisions in its IP framework that were specifically enacted for AI (an example would be a modification of copyright law for computer generated works)?

- No
- Yes
- Draft/proposed only
- Do not know

5. Please provide details of the relevant legislative measures/provisions identified in Q4 (name, section, short description, year and URL).

The Copyright Act has provisions that were specifically enacted for AI.

The Copyright Act, Article 30-4, 47-4, 47-5 was amended in 2018 that introduced “flexible limitation provisions” for usage of copyrighted works needed for innovations through technologies such as IoT, big data, and AI for smooth exploitation of works.

Especially, Article 30-4 prescribes limitation for exploitation without the purpose of enjoying the thoughts or sentiments expressed in a work. This article is applied to actions such as collecting data necessary for machine learning in developing AI and providing those data to third parties.

For more detail, please see the following site.

<http://www.japaneselawtranslation.go.jp/law/detail/?re=01&ft=1&ky=%E8%91%97%E4%B D%9C%E6%A8%A9&page=21>

Japan is also examining how to improve a patent system appropriate for AI and IoT technologies at the Patent System Committee of the Industrial Structure Council. Some discussion points such as enforcement based on AI related-technologies have been proposed.

https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/tokkyo_shoi/document/36-shiryu/03.pdf

6. Is there any case law relevant to AI and IP in your country/region?

- No
- Yes
- Do not know

7. Please provide details of the decision(s) relating to Q6 (name, short description of subject matter, year and URL).

EXAMINATION GUIDELINES

8. Has your country's IP office (or other IP registration body) amended its examination guidelines and procedures due to AI-related inventions or works?

- No
- Yes
- Draft/proposed only
- Do not know

9. Please provide details of the relevant guidelines and sections identified in Q8 (name, short description, year and URL)

Annex B, Chapter 1 of the Examination Handbook for Patent and Utility Model, which is entitled "Computer Software-Related Inventions," explains the examination procedures for AI-related inventions. In 2018, the Japan Patent Office (JPO) revised Chapter 1 to describe its fundamental policy of AI-related inventions.

The JPO also created the Case Examples of examinations on AI-related inventions in 2017 and 2019, aiming to further clarify the examination procedures for AI-related inventions. These Case Examples were added into Annexes A and B of the Examination Handbook.

https://www.jpo.go.jp/e/system/laws/rule/guideline/patent/ai_jirei_e.html

https://www.jpo.go.jp/e/system/laws/rule/guideline/patent/handbook_shinsa/index.html

DATA RIGHTS

10. Does your country/region have any legislative measures/provisions for database rights?

- No
- Yes - enacted law
- Draft/proposed law only
- Do not know

11. Please provide details of the relevant legislative measures/provisions identified in Q10 (name, short description, year and URL).

A database can be protected as a work when the database constitutes a creation by reason of the selection or systematic construction of information contained therein under Article 12-2 (1) of the Copyright Act. Even in the case where a database is protected, the rights of the author of a work that forms parts of a database will not be affected.

Japan has introduced civil measures against unauthorized acquisition etc. of valuable data under the Unfair Competition Prevention Act (UCPA, revised in 2018) so as to promote data utilization. Please note that the revised Act does NOT grant an exclusive right for database but restricts wrongful acts.

The revised Act defines “protected data” as data satisfies “limited provision”, “electromagnetic management” and “significant accumulation”. Unauthorized acquisition, use and disclosure of “protected data” were added as one of the types of unfair competition in the revised Act. The revised Act provides for civil measures, such as injunction and damage claim, against unauthorized acquisition, use, disclosure, etc. of “protected data”.

Overview of the revision is shown here:

https://www.meti.go.jp/english/policy/economy/chizai/chiteki/pdf/english_2018rev.pdf

12. Does your country recognize any rights or ownership in data?

- No
- Yes
- Draft/proposed only
- Do not know

13. Please provide details of the relevant legislative measures/provisions identified in Q12 (name, short description, year and URL).

14. Does any AI strategy identified in Q1 or other strategy consider data and any creation of a sui generis right for data and/or databases?

- No
- Yes
- Draft/proposed only
- Do not know

15. Please provide details of the data strategy identified in Q14 (name, short description, year, URL and responsible organization name).

Integrated Innovation Strategy Promotion Council Decision, AI Strategy 2019 AI for Everyone: People, Industries, Regions and Governments (2019)
https://www.kantei.go.jp/jp/singi/ai_senryaku/pdf/aistratagy2019en.pdf

To our knowledge, there isn't any strategy that consider creation of a sui generis right for data in Japan at this point. On the other hand, the Strategy above summarizes the data strategy related to AI as follows.

"The thing that fundamentally supports advances in AI technology is large amounts of data. It is extremely important to collect high quality data, keep it safe from risks such as cyber-attacks and use it for analysis.

For this reason, in order to keep pace with other countries, Japan also needs to work on coordination and standardization of data possessed by the government and the private sector. And in the process, prevent bias in big data and avert potential risks of AI utilization.

On the other hand, it is extremely important to ensure the trustworthiness of data, authenticity, and identify verification. In the United States there is already a trust infrastructure in the government procurement sector, and a common trust infrastructure in the EU is under construction. Japan has begun studying the issue, but, for example, we need to accelerate the consideration of measures to ensure the security of the entire supply chain ("Cyber Physical Security Framework")" (p50)

Please refer to pp50-53 of the Strategy above for initiatives that the government should work on.

16. Please provide details of any other related processes related to AI/data and IP undertaken

in your county/region, for example, public consultation processes, guidance notes for legislative interpretation, policy guidance, communications, working groups, etc. (name, short description, year and URL).

Japan has released following guidelines in the areas of data protection and copyrights. We will also give information of the Cabinet Office's and JPO's initiatives to address the AI-related matters.

1 Data

Japan has released "Guidelines on Protected Data", which show interpretation of the requirements, concrete examples etc. regarding "protected data" mentioned in Q11.

https://www.meti.go.jp/english/policy/economy/chizai/chiteki/pdf/guidelines_on_protected_data.pdf

Japan has also released "Contract Guidelines on Utilization of AI and Data". The Guidelines explain matters that should be included in data-related contracts (contracts relating to utilization, processing, transfer and other handling of data) and a fundamental approach to contracts regarding the development and utilization of AI-based software.

Data Section : <https://www.meti.go.jp/press/2019/04/20190404001/20190404001-1.pdf>

AI Section : <https://www.meti.go.jp/press/2019/04/20190404001/20190404001-2.pdf>

2 Copyright

Japan has released a guidance notes for legislative interpretation regarding "flexible limitation provisions" of Copyright Act in 2019.

https://www.bunka.go.jp/seisaku/chosakuken/hokaisei/h30_hokaisei/pdf/r1406693_17.pdf

3 Cabinet Office's Initiatives

Secretariat of Intellectual Property Strategy Headquarters, Cabinet Office released report titled "Committee to Review Intellectual Property regarding New Data-related Assets" (2017)

The Report (only Japanese version is available):

https://www.kantei.go.jp/jp/singi/titeki2/tyousakai/kensho_hyoka_kikaku/2017/johozai/houko_kusho.pdf

English Summary of the Report:

https://www.kantei.go.jp/jp/singi/titeki2/tyousakai/kensho_hyoka_kikaku/2017/johozai/houko_kusho_e.pdf

The Committee above mainly discussed issues as below.

- Support for making contracts and establishing distribution infrastructure related to “valuable data”
- Establishment of a fair competitive environment as a basis for smooth sharing of, and consideration of possible rights to promote utilization of, “valuable data”
- Improvement of environment concerning promotion of creation of datasets for AI machine learning
- Clarification of how the intellectual property system relates throughout the generation process of AI

Please refer to the English summary above for more details of the Report.

4 Japan Patent Office’s Initiatives

The JPO held the “International Symposium on Patent Examination Practices on AI-related Inventions” in November 2019, inviting experts from the IP5 Offices and others. During the seminar, we discussed how each office determined the patentability of claimed AI-related inventions based on common case examples the JPO prepared(*), which points applicants should pay attention to during patent examination for patent acquisition, and what each office should work on for raising the predictability of the patent examination.

https://www.jpo.go.jp/e/news/kokusai/seminar/shinsa_jitsumu_2019.html

(*) The common case examples has already been published in Annexes A and B of the Examination Handbook.

https://www.jpo.go.jp/e/system/laws/rule/guideline/patent/handbook_shinsa/index.html

In addition, how to improve a patent system appropriate for AI and IoT technologies is under discussion at the Patent System Committee of the Industrial Structure Council. Public comments are also taken into consideration for the discussion.

<For you information>

Regarding the IP Office administration, JPO formulated an “Action Plan” in FY2017 with regard to utilizing artificial intelligence technology in the future, and revised the Action Plan in November 2018. JPO has conducted **PoC** (Proof of Concept) projects in accordance with this Action Plan. JPO has examined the feasibility of introduction and developed business support tools based on the verification results.

https://www.jpo.go.jp/system/laws/sesaku/ai_action_plan/document/ai_action_plan-

[fy30/plan.pdf](#)