Japan

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1.   What is the understanding or definition of AI in your jurisdiction?

General understanding

At least one standard Japanese dictionary defines the term 'Artificial Intelligence (AI)' as: '[a] computer system which is equipped with functions of the human brain such as learning, predicting and judging.'[267] From an academic perspective, however, the term 'AI' has no uniform definition among Japanese researchers.

Legal terminology

Japan currently has no uniform statutory definition of the term 'AI'. However, in the Basic Act on the Advancement of Public and Private Sector Data Utilisation, enacted in December 2016, the term 'artificial intelligence-related technology' is defined as, 'technology for the realisation of intelligent functions, such as learning, inference, and judgement, by artificial means, and use of the relevant functions realised by artificial means.'

2.   In your jurisdiction, apart from legal tech tools (ie, law firm or claim management, data platforms etc), are there any actual AI tools or use cases in practice for legal services?

Introduction

Various legal tech services that leverage AI and natural language processing are currently being used Japan's legal sector.

There are generally two categories of services: services provided to lawyers and corporate legal staff to improve operational efficiency, such as contract review, contract management, document review (predictive coding), legal research,

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267 *Daijien*, 3rd edition, 2006.

and contract translation; and services provided to increase accessibility to justice and law for general consumers, such as do-it-yourself (DIY) and online dispute resolution (ODR).

The following are core services in Japan provided to lawyers and corporate legal staff.

CONTRACT REVIEW

'Legal Force', an AI-based Japanese-language contract review service provided by Legal Force Inc, is used by more than 500 companies and law firms in Japan. Its main functions include an automatic contract review feature, a knowledge management system, and a template database containing provisions from 420 types of contracts.[268]

The automatic contract review function supports 32 types of contracts, which can be reviewed and edited directly by uploading a Word format contract into Legal Force. The tool determines the content of the contract, clause by clause, and alerts the user of legal risks. Proposed revisions to the flagged clauses are presented according to their risk profile, and the uploaded contract can be modified directly by the user according to these alerts. The system also has the capacity to suggest clauses that are missing from the contract under review. The importance of a clause can be pre-set and the priority of review can be customised to users' preferences.

The knowledge management function can automatically extract and register vital information, such as the name of the contract and the names of the parties etc, in uploaded contracts. It can also search for similar contracts or in-house templates from the tool's library. With the comparison function, the system can automatically compare terms between two contracts (for example, the proposed contract and the user's template) and produce a table of their similarities and differences. This comparison can be conducted even if the order of clauses in each respective contract is different.

There are also other contract review services in Japan, such as *AI-CON* provided by GVA Tech.[269]

DOCUMENT REVIEW (PREDICTIVE CODING)

'KIBIT', an artificial intelligence engine provided by FRONTEO Inc, is a document review and predictive coding service which supports language analysis in Japanese, Korean, Chinese, and English.[270] KIBIT is used in fraud investigations and e-discovery, and is also routinely used for email auditing. According to our

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268 Legal Force website, available at: https://legalforce-cloud.com.

269 AI-CONPro website, available at: https://ai-con-pro.com.

270 FRONTEO website, available at: https://www.fronteo.com.

interviews with company representatives, relative to other services, KIBIT provides highly accurate reviews using comparatively less training data. For example, the tool can flag up emails that suggest fraud by analysing a message's content and context, even if such emails do not explicitly refer to fraud.

MNTSQ Ltd is developing a document review service to conduct legal due diligence, backed by Nagashima Ohno & Tsunematsu (NO&T),[271] one of Japan's 'Big Five' law firms. Although not yet available to the public, MNTSQ is currently training its machine learning algorithm with a data set of anonymised contracts.

LEGAL RESEARCH

'Legalscape', provided by Legalscape Inc, unifies and connects legal information (legal literature, judgements, administrative documents, guidelines, public comments, etc) from both online and offline sources. This enable lawyers to conduct comprehensive online legal research through what the company envisions as 'a legal version of Google'.[272] For example, the system allows its users to search through 532 registered law-related books in full text and displays where the searched keyword appears within each book. Legalscape uses its AI to organise and structure this legal information by adding 'headings' and 'text' tags to each document it searches.

There are other legal research services in Japan, such as 'LEGAL LIBRARY'[273] and 'LION BOLT'.[274]

CONTRACT TRANSLATION

The Rosetta Corporation's 'T-400', a service that uses machine learning to translate legal documents and contracts automatically, has already been adopted by many law firms and companies in Japan.[275]

3.   If yes, are these AI tools different regarding independent law firms, international law firms, and in-house counsel? What are these differences?

Our research indicates that large independent Japanese law firms have introduced document review, legal research and contract translation services into their practices, but have yet to adopt contract review services.

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271 MNTSQ, website, available at: https://www.mntsq.co.jp.

272 Legalscape website, available at: https://www.legalscape.co.jp.

273 LEGAL LIBRARY website, available at: https://legal-library.jp.

274 Sapiens website, available at: https://sapiens-inc.jp.

275 Rozetta AI Auto-Translation, available at: https://www.rozetta.jp/department/?id=sec01.

Our research also indicates that an increasing number of major Japanese companies have adopted contract review and translation services. Contract review services are perceived as particularly useful, especially among non-lawyers in corporate legal departments.

Although international law firms have introduced contract translation services developed by Japanese companies into their practices, they do not appear to have adopted other domestically developed legal tech services.

4. What is the current or planned regulatory approach on AI in general?

Vision for 'Society 5.0'

The Japanese government has launched the vision of 'Society 5.0', defined as:

'[a] human-centred society that balances economic advancement with the resolution of social problems by a system that highly integrates cyberspace and physical space.'[276] Society 5.0 was proposed by the government in the 5th Science and Technology Basic Plan 'as a future society that Japan should aspire to, which follows the hunting society (Society 1.0), agricultural society (Society 2.0), industrial society (Society 3.0), and information society (Society 4.0).'

According to the Cabinet Office website, in Society 5.0, people, things, and systems are all connected in cyberspace. Accordingly, AI analyses all of this data and feeds optimised results and solutions back into physical space, thereby bringing new value to industry and society in ways not previously possible. As seen above, AI will play a significant role in Society 5.0.

Japan aims to become the first country to achieve a human-centred society (Society 5.0) in which anyone can enjoy a life full of vigour. It intends to accomplish this goal by incorporating advanced technologies in a diverse range of industries and social activities, fostering innovation to create new value.

Principles and guidelines relating to AI

Based on its 'human-centred' policy, the Japanese government has established the Council for Social Principles of Human-Centric AI and adopted the 'Social Principles of Human-Centric AI'.[277] The charter consists of:

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276 Cabinet Office, Government of Japan, definition of *Society 5.0*, available at: https://www8.cao.go.jp/cstp/english/society5_0/index.html.

277 'Social Principles of Human-Centric AI', Council for Science, Technology and Innovation, Japan Cabinet Office, 2019, available at: https://www8.cao.go.jp/cstp/english/humancentricai.pdf.

- three basic philosophies – dignity, diversity and inclusion, and sustainability;

- seven principles – (1) human-centric, (2) education/literacy, (3) privacy protection, (4) ensuring security, (5) fair competition, (6) fairness, accountability and transparency, and (7) innovation; and

- two additional documents, the AI R&D Guidelines for International Discussions[278] consisting of nine principles, and the AI Utilisation Guidelines[279] consisting of ten principles, along with their respective commentaries were also released as practical references.

It should be noted that such Japanese principles for AI have given effect to the Recommendation of the Council on Artificial Intelligence, adopted by OECD Board.

As seen above, the rules related to AI have been made as 'soft-law' in Japan. According to our research, there is currently no legislative plan to regulate AI as 'hard law'.

5. What are the current or planned regulations on the general use of AI or machine learning systems?

Introduction

There are currently no statutes or regulations that specifically regulate AI in Japan. As a result, existing legislation is generally applied to AI or machine learning systems. However, in some areas, existing legislation has been updated to meet the new challenges arising from AI-related issues. Given this context, in this chapter, we focus on introducing new or updated legislation in three key areas, namely: autonomous driving issues; copyright; and Big Data protection. Privacy and personal data protection is further explored in Question 6 below.

AUTONOMOUS DRIVING ISSUES

A typical example of an AI-equipped technology approaching practical use in Japan is a car with an autonomous driving function.

In Japan, there are six classifications (Level 0 to Level 5) which categorise automatic driving according to J3016 (September 2016) by SAE International and its Japanese reference translation, JASO TP 18004.

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278 'Draft AI R&D Guidelines for International Discussions', The Conference toward AI Network Society, 28 July 2017, available at: https://www.soumu.go.jp/main_content/000507517.pdf.

279 See https://www.soumu.go.jp/main_content/000658284.pdf.

In Level 3 automated vehicles for example, there will be a 'fallback-ready user' who is prepared to respond to traffic, road, or hazardous conditions. This user does not need to control the vehicle directly in normal conditions while the autonomous driving system is operating. However, this fallback user will be responsible for responding appropriately to the system's intervention requests. In contrast, personnel within Level 4 or 5 driverless vehicles are no longer considered drivers, but passengers, with no role in vehicle operation.

The Road Traffic Act and the Road Transport Vehicle Act, both which were amended in 2019, provide a new definition for 'automatic navigation system'. The term is now defined as a device that has 'functions to replace the entire ability of the driver of the vehicle to recognise, predict, judge, and operate the vehicle', ie, automatic driving function using AI technology. In vehicles equipped with an 'automatic driving device', drivers are now exempt from rules that preclude them from talking on mobile phones or looking at electronic displays, such as navigation systems (Article 71-4-2, paragraph two of the Road Traffic Act). This amendment allows level 3 autonomous-driving cars to use public roads.[280]

In Japan, negligence of an actor is required to impose tort liability. With respect to tort liability in the event of a traffic accident, a Level 3 designation does not relieve the user of an automated vehicle entirely of the duty to drive and operate the vehicle while it is driving autonomously. However, drivers are not required to take direct control of the vehicle and the duty of care necessary while driving is reduced. As a result, drivers may not be found negligent for an accident involving a Level 3 vehicle. At Level 4 and above, the user of an automated vehicle is, in principle, allowed to trust the proper operation of the system and does not owe a duty of care while the system is in use. Therefore, in principle, the user is not negligent for any accident while using the system. However, failure to perform the required inspection and maintenance of the car's software before driving may constitute negligence. In addition, if the autonomous-driving car repeatedly behaves abnormally and the user continues to use the system, the user may be considered negligent. Furthermore, if the user should have suspected the system to be defective or the user's assumption of trust in the system has diminished, negligence may also be imposed.

In Japan, the Compulsory Insurance System has been established in accordance with the Act on Securing Compensation for Automobile Accidents. The owners and other operators of cars are made to bear de facto strict liability for traffic accidents in order to provide prompt and reliable compensation for damage.

The Ministry of Land, Infrastructure, Transport and Tourism's Study Group on Liability for Damages in Automated Driving has studied the liability for damages under the Act for accidents involving vehicles equipped with up to Level 4 autonomous driving capabilities. Its report, which was published in March 2018,

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280 'Autonomous Driving', National Police Agency, available at: https://www.npa.go.jp/bureau/traffic/selfdriving/index.html.

covers a transitional period until around 2025.[281] The report concluded that at least until the transitional period, strict liability should continue to be imposed on the owners or operators of autonomous vehicles involved in accidents. The liability of the manufacturers of autonomous-driving vehicles is also being discussed among academics and lawyers.

Regarding the application of criminal law to accidents while using automated driving systems, there is discussion whether criminal law is applicable to AI itself in cases where errors in the AI's judgement is the causes of the accident.

COPYRIGHT

To develop AI effectively, AI systems need as much training data as possible, and such data sets may contain copyrighted material. Consequently, there is debate as to whether the use of copyrighted works for the purpose of AI analysis should be permitted, and in the case that it is, to what extent. As the basic framework, the Copyright Act of Japan has not recognised a 'fair use' defence against alleged copyright infringement, but the legislation lists certain specific acts, including reproduction for private use or citation, etc, as being exceptions to copyright infringement. In general, the scope and conditions of such exceptions are explicitly prescribed in the Act. However, new exceptions to copyright infringement are now emerging, which were not previously contemplated by the Act. For example, according to the Copyright Act as amended in 2018, unless it unduly harms a copyright holder's interests, copyrighted works may, to the extent necessary, be used in any manner if such use is made for any purpose other than enjoying the expression of the copyrighted works, including for the purpose of information analysis. This exception is applicable even for commercial use, and even for use for the benefits of third parties. Consequently, use of copyrighted works as training data for deep learning or machine learning and the creation of training datasets for circulation among business partners or affiliates does not constitute copyright infringement. Given such broad exceptions to copyright infringement, a Japanese researcher has deemed Japan 'a paradise for machine learning'.

PROTECTING BIG DATA

The use of Big Data plays a significant role in enhancing the capabilities of AI, thereby necessitating the protection of its commercial value. However, under article 206 of the Japanese Civil Code, '[a]n owner has the rights to freely use, obtain profit from and dispose of the Thing owned, subject to the restrictions prescribed by laws and regulations', and under article 85 of the Civil Code, '[t]he term "Things" as used in this Code shall mean tangible things.'

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281 Report of the Study group on liability for damages in autonomous driving, 2018, available at: https://www.mlit.go.jp/common/001226452.pdf.

Therefore, no ownership right is conferred in data, as it not considered tangible. Also, due to the absence of creativity, inventiveness, or novelty, Big Data is not generally copyrightable or patentable under current law. Big Data may qualify for protection as a 'trade secret' as defined under the Act against Unfair Competition. However, since Big Data often contains non-confidential information, it often does not qualify as a trade secret. To address this issue, the Act was amended as of July 2019 and added protection for certain elements within Big Data. These protected elements, called 'data for limited provision', are defined as technical or business information that is: accumulated in a reasonable amount by electronic or magnetic means (ie, an electronic form, a magnetic form or any other form that is impossible to perceive through human senses alone) and managed by electronic or magnetic means as information provided to specific persons on a regular basis. If Big Data qualifies as 'data for limited provision' under the Act, certain types of conduct, such as misuse, misappropriation, or unauthorised disclosure of such data are subject to injunction and compensatory damages.

6.   Is free data access an issue in relation to AI?

Protection of privacy

Under established court precedence, an individual enjoys constitutional rights to privacy and to not having their private life unduly disclosed to the public.

Protection on personal data

Certain personal information is protected under the Act on the Protection of Personal Information of Japan. Personal Information is defined as information about a living individual which: can identify the specific individual by name, date of birth or other description contained in such information (including such information as will allow easy reference to other information and will thereby enable the identification of the specific individual); or contains the personal identification number. Under the Act, business operators storing personal information in searchable compiled databases for their business use are required to comply with certain requirements. These include the identification of the purpose of use, restriction on the purpose of use, appropriate acquisition, notification of the purpose of use on acquisition, and management of claims. In addition, such business operators are forbidden from providing a third party with personal information which constitutes a component of their database (defined as personal data), unless they obtains the principal's consent.

In the context of Big Data to be collected or used for AI analysis, unlike GDPR, information such as cookie-obtained information including browsing history, IP address, and location data do not qualify as personal information under the Act since they cannot be used to identify a specific individual. However, an issue arose

in 2019 when cookie-obtained information relating to the university students' job-seeking behaviour was analysed by AI and later sold to recruiting companies without the students' consent. Under such circumstances, the Act was amended in 2020, adding the category of 'personal related information', defined as 'the information about a living individual which cannot identify the specific individual by itself.' In case personal related information is to be transferred to a third party, and such information qualifies as personal data which can identify specific individuals in conjunction with other information already possessed by the acquirer, the transferor must obtain the individual's consent, and the acquirers must confirm that the transferor has received the individual's consent.

AI principles

The 'Principle for Privacy' is contained in both AI R&D Guidelines for International Discussions and AI Utilisation Guidelines mentioned in Question 4 above.

7.   Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

According to our research, there are no decisions regarding the use of AI in the providing of legal services.

8.   What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Based on the premise that the AI currently being developed and operated is so-called weak AI (ie, AI that appears to be doing something similar to the intellectual activities performed by humans on a particular issue), the dominant view is that AI cannot fully supplant the core work of lawyers given the current state of the technology.

As a result, AI tools are considered supplementary tools to support lawyers and there has been no discussion of the full-fledged regulation of AI service providers. Some academics and lawyers with keen interest in legal tech have begun discussing the relationship between the legal tech services currently being offered and the current Article 72 of the Attorney Act, which regulates legal services as a monopoly for lawyers.

9.   What is the role of the national bar organisations or other official professional institutions?

The Japan Federation of Bar Associations (JFBA) has the principle of lawyer autonomy in Japan. Therefore, the JFBA, and not the Ministry of Justice, develops regulations and ethical guidelines regarding the use of AI in legal practice. The regulations and guidelines set by the JFBA are followed by all lawyers.

However, while some JFBA committees, such as the Professional Reform Committee, have begun researching AI and its use in the practice of law, AI has yet to be discussed in earnest. Consequently, the JFBA's official position on the use of AI has not been presented.

Priority is currently being given to discussions about digitising civil trial procedures (e-court, e-filing, and e-case management), rather than introducing AI. Revision of the Code of Civil Procedure is being considered for 2022.

As part of this trend, the Project Team for Open Data of Civil Judgements, established by the Japan Federation of Bar Associations Legal Research Foundation, has been studying the possibility of providing information on civil judgements as electronic data to a wide audience by 2023.[282] Such digitalisation and publication of civil judgements will facilitate the development of AI tools for analysing and predicting judgements.

Article 11 of the Basic Code of Professional Conduct established by the JFBA bans lawyers from using or cooperating with service providers if there are reasonable grounds to suspect that such service providers may breach article 72 of the Attorney Act, which provides lawyers with a monopoly on legal services. Therefore, legal tech service providers in Japan are sensitive to taking on responsibilities or fielding work which may be within the scope of lawyers. On the other hand, Article 7 of the Code states that 'lawyers shall endeavour to study in order to become better educated and to become familiar with laws and legal affairs'. In future, this professional development obligation may be extended to require lawyers to learn about AI tools and use them in their legal practice for the benefit of their clients.

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282 'Considering open data of civil judgment', Japan Federation of Bar Associations Legal Research Foundation, available at: https://www.jlf.or.jp/wp-content/uploads/2020/08/minjiodpt_siryou20200327.pdf.