

Japan

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

At present, there is no established definition of artificial intelligence (AI), making it difficult to strictly define the extension of broad AI. It is referred to in the AI Business Operators Guidelines, issued by the Ministry of Internal Affairs and Communications and the Ministry of Economy, Trade and Industry on 19 April 2024 (the 'AI Business Operators Guideline') that, 'within this guideline, AI is considered as either the "AI system" itself or an abstract concept including software or programs that perform machine learning'.

2. In your jurisdiction, besides 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?

Various legaltech services that leverage AI and natural language processing are currently being used in 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 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

LegalForce, an AI-based Japanese and English contract review service provided by LegalOn Technologies, is used by more than 3,500 companies and law firms in Japan. Its main functions include an AI review service, an AI contract and knowledge management system, and a template database containing provisions from 1,500 types of contracts.⁴⁶⁷

The AI contract review supports 70 types of contracts, which can be reviewed and edited directly by uploading a Microsoft Word contract into LegalForce. The tool

⁴⁶⁷ See the Legal Force website, <https://legalforce-cloud.com> accessed 3 June 2024.

determines the content of the contract, clause by clause, and alerts the user of legal risks. This function recently started to provide revision to the flagged clauses by utilising a ChatGPT application programming interface (API). 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. 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

In addition, companies can accumulate their own legal database by exerting the contract and knowledge management system called LegalForce Cabinet. This service can automatically extract and register vital information, such as the name of the contract and the names of the parties, types of contracts, etc, in uploaded contracts. It also enables users to search for executed contracts or specific clauses included in executed contracts from the tool's library.

There are also other contract review services in Japan, such as:

- Cloudsign Review, provided by Bengo4;⁴⁶⁸
- GVA Assist, provided by GVA Tech;⁴⁶⁹ and
- MNTSQ, provided by MNTSQ.⁴⁷⁰

Document review (predictive coding)

KIBIT, an AI engine provided by FRONTEO, is a document review and predictive coding service which supports language analysis in Japanese, Korean, Chinese and English.⁴⁷¹ KIBIT is used in fraud investigations and e-discovery and is also routinely used for email auditing. According to our 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.

BoostDraft, the first legal document editor for legal professionals, assists Japanese companies and law firms to solve inefficiencies in legal drafting. BoostDraft enables users to quickly access and verify references to articles, laws and defined terms without scrolling through the document. It also helps users quickly complete

468 See the Cloudsign Review website, www.cloudsign.jp/review accessed 3 June 2024.

469 See the GVA Assist website, <https://ai-con-pro.com> accessed 3 June 2024.

470 See the MNTSQ website, www.mntsq.co.jp accessed 3 June 2024.

471 See the FRONTEO website, www.fronteo.com accessed 3 June 2024.

time-consuming tasks such as formatting the document, eliminating typos and omissions and correcting inconsistencies in the document. BoostDraft is integrated into Microsoft Word via a plugin function, which means users can use this service without introducing any new software.⁴⁷²

Legal research

Legalscape, provided by Legalscape, unifies and connects legal information (legal literature, judgments, administrative documents, guidelines, public comments, etc) from both online and offline sources. This enables lawyers to conduct comprehensive online legal research through what the company envisions as 'a legal version of Google'.⁴⁷³ For example, the system allows its users to search through 2,800 registered law-related books and 7,000 laws in full text and displays where the searched keyword appears within each book. Legalscape combines its original natural language processing technology optimised for legal content with generative AI to provide an AI-powered research function. With this function, users can simply ask questions about what they want to know, and the AI will display a list of the reliable legal literature and summarise the key points.

There are other legal research services in Japan, such as LEGAL LIBRARY⁴⁷⁴ and LION BOLT.⁴⁷⁵

Contract translation

The Rozetta Corporation's T-400, a service that uses machine learning to automatically translate legal documents and contracts, has already been adopted by many law firms and companies in Japan.⁴⁷⁶

LeTranslate, provided by Lisse, is developed in cooperation with native English-speaking attorneys, and can provide customers with highly accurate translation services between English and Japanese.⁴⁷⁷

3. If yes, are these AI tools different regarding:

- independent law firms;
- international law firms; and
- in-house counsel;

and what are these differences?

472 See the BoostDraft website, <https://boostdraft.com/features> accessed 3 June 2024.

473 See the Legalscape website, www.legalscape.co.jp, accessed 3 June 2024.

474 See the LEGAL LIBRARY website, <https://legal-library.jp> accessed 3 June 2024.

475 See the LION BOLT website, <https://law-books.lionbolt.jp> accessed 3 June 2024.

476 See the Rozetta AI Auto-Translation, www.rozetta.jp/t400 accessed 3 June 2024.

477 See the LeTranslate website, <https://lisse-law.com/translation> accessed 3 June 2024.

Our research indicates that independent Japanese law firms have introduced document review, legal research, case management and contract translation services into their practices. Large law firms also use proofreading tools to improve working efficiency.

Our research also indicates that an increasing number of major Japanese companies have adopted AI contract review, contract management and translation services. AI contract review services are perceived as particularly useful, especially among non-lawyers in corporate legal departments. According to a survey published by Nikkei,⁴⁷⁸ over 40 per cent of Japanese companies, including listed companies, medium and small companies, have introduced AI tools for checking omissions in contract clauses.

Although international law firms have introduced AI contract review and 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?

The AI Business Operators Guidelines, which consolidated existing documents related to AI risk management into a comprehensive guideline, has garnered significant attention. When it was released as a draft in December 2023, it received thousands of public comments during a month-long feedback period.

Content of the AI Business Operators Guidelines

Basic principles and guidelines

The 'main text' explains the societal vision and the specific actions that AI operators should aim for. This section outlines the basic directions and principles for maximising societal benefits using AI.

Practical approaches

The 'appendices' section details the specific approaches to be taken, providing concrete guidelines useful for actual operations.

Target audience

The guidelines target the following three main groups:

478 See the NIKKEI website, www.nikkei.com/article/DGXZQOUC300NU0Q3A231C2000000 accessed 3 June 2024.

1. *AI developers*: businesses that develop AI systems.
2. *AI providers*: businesses that incorporate developed AI systems into products or services and offer them to the market.
3. *AI users*: businesses that use AI systems or services in their operations.

These target audiences are identified based on specific AI use cases and their stakeholders.

Key sections of the Guidelines

Common Guidelines (C)

This includes basic elements of AI governance such as human-centred design, safety and fairness. It also covers aspects of education and innovation, integrating similarities from various domestic and international guidelines.

Guidelines Common to Operators of Advanced AI Systems (D)

Guidelines for advanced systems, including cutting-edge technologies such as generative AI. This section clarifies the roles of not only AI developers but also providers and users in reducing risks and promoting the use of AI.

Building ai governance (e)

Based on an agile governance approach, this provides methods for quickly updating governance cycles. The aim is to flexibly apply governance frameworks in a society with increasing uncertainty.

These guidelines, created based on domestic and international policy and technological trends, cover a broad range of issues and serve as a crucial resource for AI business operators.

As seen above, the rules related to AI have been made as soft law in Japan. However, there is an ongoing discussion about creating an AI governance law, led by the Liberal Democratic Party (Japan's ruling party), to regulate developers of AI foundation models. Although the details of the discussion are unclear, it will be necessary to closely monitor future developments.

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

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, we will 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.

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.

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 2019 amendments to the Road Traffic Act and the Road Transport Vehicle Act introduced the definition of an ‘automatic driving device’ as a device with functions that 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. The automatic driving device allows the drivers to be exempt from rules that preclude them from talking on mobile phones or looking at electronic displays, such as navigation systems.⁴⁷⁹ The 2019 amendments allow Level 3 autonomous-driving cars to operate on public roads.⁴⁸⁰

The 2022 amendments to the Road Traffic Act have further deregulated Level 4 autonomous driving. The Road Traffic Act introduced the concept of ‘specified automatic driving’, defined as the operation of a motor vehicle equipped with an automatic driving device under the specified conditions for that device, excluding cases where a person is present to operate the

479 Road Traffic Act Article 71-4-2 para 2.

480 ‘Autonomous Driving’ (National Police Agency), www.npa.go.jp/bureau/traffic/selfdriving/index.html accessed 3 June 2024.

vehicle's device in response to road, traffic and vehicle conditions.⁴⁸¹ To engage in specified automatic driving, one must obtain permission from the Public Safety Commission having jurisdiction over the subject area.⁴⁸² Furthermore, the business operator of the specific automatic driving must fulfil certain obligations under the Road Traffic Act.

In addition, the 2022 amendments have paved the way for autonomous delivery robots to operate on public roads, subject to the same traffic rules as pedestrians. However, such robots must adhere to certain conditions, including a maximum speed limit of six kilometres per hour and a body size comparable to that of an electric wheelchair.

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 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, covers a transitional period until around 2025.⁴⁸³ 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

481 Road Traffic Act Article 2 para 1 item 17-2.

482 Road Traffic Act Article 75-12, para 1.

483 *Report of the Study group on liability for damages in autonomous driving*, (Ministry of Land, Infrastructure, Transport and Tourism, March 2018), www.mlit.go.jp/common/001226452.pdf accessed 3 June 2024.

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 are 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 (the 'Copyright Act') 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 Copyright Act. However, new exceptions to copyright infringement are now emerging, which were not previously contemplated by the Copyright 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'.

On 18 April 2024, the Cultural Affairs Agency published a summary of the document *Perspectives on AI and Copyright*, which was compiled by the Copyright Subcommittee of the Cultural Council's Legal System Committee on 15 March 2024. This document was prepared in response to the rapid development of generative AI, and it discusses how the existing copyright law applies to AI.

The main points of discussion are as follows:

- the development and learning stages of AI;
- the generation and usage stages of AI; and
- whether content generated by AI qualifies as a copyrightable work.

Additionally, scenarios such as AI mimicking the style of specific creators, using pirated content knowingly, and the copyrightability of human modifications or enhancements to AI-generated content are discussed. These considerations aim to clarify whether current copyright laws are violated and who holds the responsibility – the AI user or the developer.

The document also highlights the future perspective on generative AI and copyright, emphasising that the sustainable development of AI technology is fundamentally reliant on human creative activities. It stresses the importance of proper communication and a collaborative relationship among creators, stakeholders and AI-related businesses.

The published content does not hold legal binding power and is subject to ongoing review and information collection.

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'.

Therefore, no ownership right is conferred in data, as it is 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 on the Protection of Personal Information of Japan, 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 obtain the principal's consent.

In the context of big data to be collected or used for AI analysis, unlike the EU's General Data Protection Regulation,⁴⁸⁴ 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

484 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

information relating to 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 the case that 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

In the *AI Operator Guidelines*, protection of privacy in all AI systems and services are set out as follows:

- appropriate data learning for the developers;
- implementation of mechanisms and measures for privacy protection measures against privacy violations for the AI providers; and
- measures against improper input of personal data and privacy violations for the AI users.

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 provided by lawyers?

According to our research, AI tools are mainly used to provide contract drafting, contract review or contract management services, which are traditionally being rendered by lawyers. In response to these trends, legal academics and lawyers with a keen interest in legal tech have been 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.

Due to growing concerns that the provision of AI-powered contract drafting, review or management services to support legal businesses may violate Article 72 of the Attorney Act, the Ministry of Justice (MOJ) published the *Relationship between the provision of contract related support services using AI and Article 72 of the Attorney Act* (the 'Guidelines') in August 2023.⁴⁸⁵

The Guidelines clarified the MOJ's view on the applicability of Article 72 of the Attorney Act to such AI tools, specifically addressing the requirements for constituting a violation and the grounds for justification. The key points of these Guidelines are as follows:

- The Guidelines mention that, in most cases, the examination of legal issues related to the conclusion of contracts in the course of ordinary business lacks 'disputes between parties', one of the elements of Article 72 of the Act.
- The Guidelines show that the main functions provided by existing contract drafting, review or management services do not fall under 'legal assessment or other legal services' as stipulated in Article 72 of the Act.
- The Guidelines clearly state that when lawyers (including in-house lawyers) use these services as support tools for their own contract work, it does not constitute a violation of Article 72 of the Act.

These Guidelines provide clarity on the legal boundaries within which AI tools can operate in Japan and offer assurance to lawyers who wish to utilise such tools to assist with their contract-related tasks.

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

The Japan Federation of Bar Associations (JFBA) upholds the principle of lawyer autonomy in Japan. Consequently, it is the JFBA, rather than the MOJ, that develops regulations and ethical guidelines regarding the use of AI in legal practice. All lawyers must adhere to the regulations and guidelines set by the JFBA.

Although the JFBA has not publicly expressed its view on the MOJ's guidelines mentioned above, it participated in the G7 Bars' Statement on Artificial Intelligence⁴⁸⁶ in October 2023. The statement encouraged the Bars and Law Societies to cooperate with each other in monitoring AI's impact on the practice of the legal profession, including attention to professional codes of conduct.

⁴⁸⁵ *Relationship between the provision of contract related support services using AI and Article 72 of the Attorney Act* (Ministry of Justice, August 2023), www.moj.go.jp/content/001400675.pdf accessed 3 June 2024.

⁴⁸⁶ *G7 Bars' Statement on Artificial Intelligence* (Japan Federation of Bar Associations Legal Research Foundation, October 2023), www.nichibenren.or.jp/library/pdf/activity/international/joint_statement/240321.pdf accessed 3 June 2024.

Currently, Article 7 of the Basic Code of Professional Conduct established by the JFBA 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.

The revision of the Code of Civil Procedure enacted in May 2022 is mainly focused on digitising civil trial procedures (e-court, e-filing and e-case management), rather than introducing AI. The Japanese government plans to implement the entire IT reform in the civil litigation system by May 2026. As part of this trend, the Project Team for Open Data of Civil Judgments, established by the Japan Federation of Bar Associations Legal Research Foundation, has been discussing the possibility of creating a database of civil judgments and making it widely available for use by the public and society.⁴⁸⁷ Such digitalisation and publication of civil judgments will facilitate the development of AI tools for analysing and predicting judgments.

Regarding the AI contract review service, the AI and Contract Review Technology Association (ACORTA), a voluntary organisation of contract review service companies established in 2022, is working to increase awareness and reliability of AI and technology in contract review services.⁴⁸⁸

487 *Recommendations on the Ideal System for the Appropriate Utilization of Civil Judgment Information*, (Japan Federation of Bar Associations Legal Research Foundation), www.jlf.or.jp/wp-content/uploads/2022/06/PT-teigen20220608.pdf accessed 3 June 2024.

488 See the ACORTA website, <https://ai-contract-review.org/#about> accessed 3 June 2024.