

Japan introduced legislation to protect valuable data, which is called “Shared data with Limited Access”, under the Unfair Competition Prevention Act in 2018, and is separate from Trade secrets. Under the new legislation, even though data is not protected as works or trade secrets, if data that satisfies specific requirements is acquired, used or disclosed illegally, the data holder can claim for injunction or compensation for damage or loss. This legislation brings about an environment where we can realize data transactions with trust. We would like to inform you that excessive data protection such as setting new rights will adversely affect the progress of innovation.

Please, let me introduce the background of the establishment of this legislation and discussions.

In 2017, Japan launched the “Committee to Review Intellectual Property regarding New Data-related Assets” in the Secretariat of Intellectual Property Strategy Headquarters to review IP systems promoting the data utilization.

In the committee, we held discussions on investigating all IP systems including copyrights, industrial property rights and others as a framework for protecting valuable data. Through the discussions, we also emphasized a balance between data protection and data utilization as well as strengthening industrial competitiveness to promote data utilization as much as possible. As a result, in light of legislative views, we concluded that it would be appropriate to adopt a defensive approach by regulating unfair competition acts due to the following three reasons:

First, setting an exclusive right to data may adversely impede data utilization. Second, the introduction of a conditional right, for example, a right under FRAND terms, would be unsuitable for data utilization because many companies will avoid obtaining licenses. Third, the introduction of a right to remuneration will not be able to prevent data misappropriation.

Based on these conclusions, Japan established minimum legislation which regulates highly malicious acts to protect data.