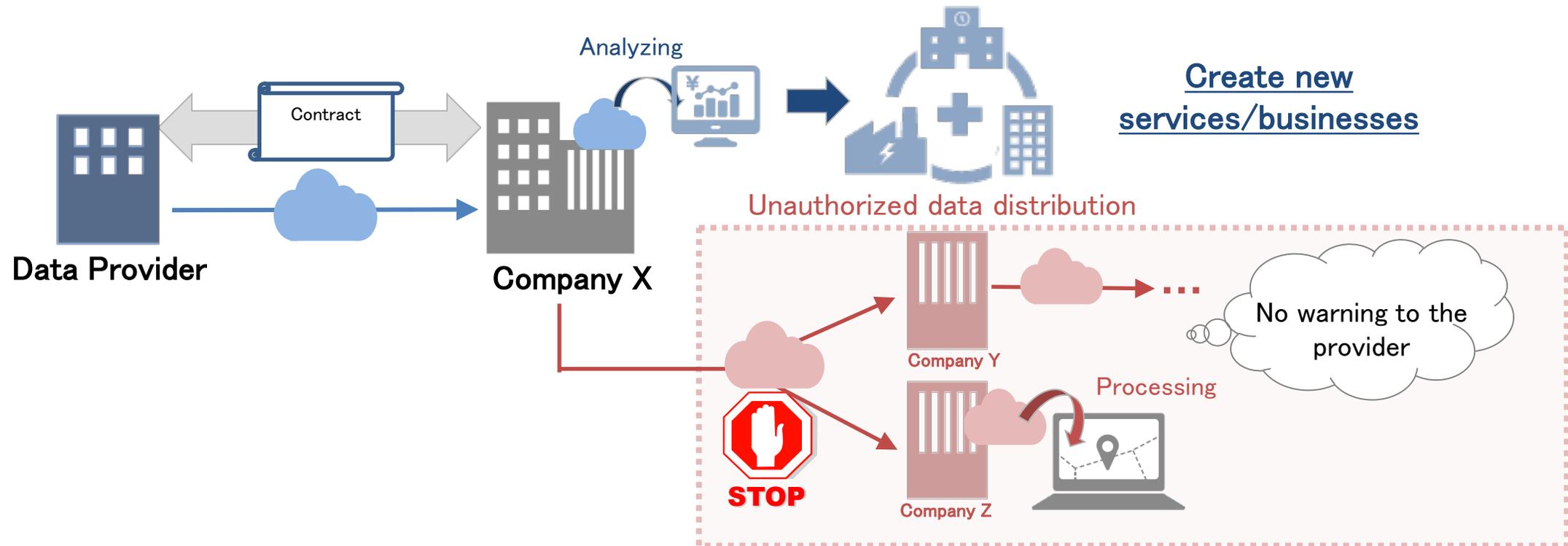


Trade Secrets and Digital Data

May 22nd, 2022
Intellectual Property Policy Office
METI, JAPAN

1. Data utilization and protection

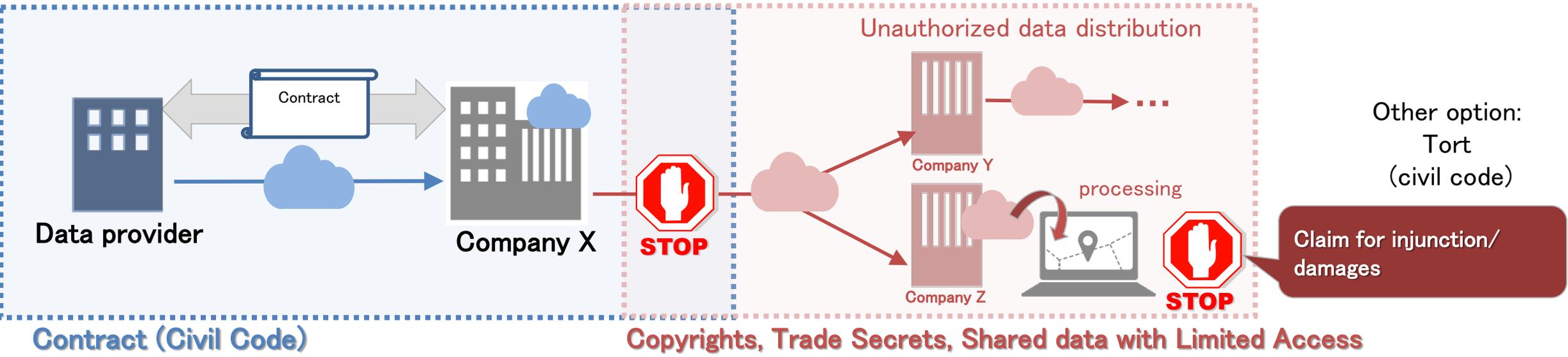
- Data has become more valuable in the digital era to drive development of the economy
- Promoting data utilization needs an environment where data providers can provide their data securely and get appropriate compensation for all their investments.



Measures/deterrence against such unauthorized data distribution are key roles for such an appropriate environment.

2. IP framework for data protection in Japan

- The data provider should manage the data securely with contracts
- (1) Copyrights, (2) Trade secrets, and (3) Shared Data with Limited Access may address unauthorized distribution by those other than contracting parties *data is not personal data.



<u>Requirement for protectable data</u>	Copyrights	Trade Secret	Shared Data with Limited Access
	<ul style="list-style-type: none"> • Creativity 	<ul style="list-style-type: none"> • Secrecy management • Non-public domain • Usefulness 	<ul style="list-style-type: none"> • Electromagnetic management • Limited provision • Significant accumulation
			Introduced under the UCPA

3. Data protection by trade secrets

- The “Management Guidelines for Trade Secrets”(*) were revised in 2019 to clarify the scope of trade secret protection

Survey
in 2017
~2100
responses

While data utilization received attentions with AI and big data,

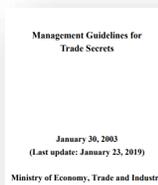
- Over 50% of companies had willingness to manage data as a TS.
- About 70% of large companies tended to have the willingness but About 60%~70% SMEs did not recognize data as a TS. Some said that they didn't know how to protect data with a TS.

<https://www.ipa.go.jp/files/000057774.pdf> p.77-79

about the
requirements of
TS



- i. Management methods are diversifying, such as using external cloud services or distributed data management. Do they satisfy the requirement for secrecy management?
- ii. It is important to clarify the scope of trade secret protection, including contracts, because the opportunity to use outsourcing companies to analyze data will increase with progress of AI
- iii. Does negative information, including information about defects, meet the requirement of usefulness?
- iv. If a part of a leaning data set includes data open to the public, does the data set satisfy the requirement for “non-public domain”?



- I,II: Appropriate management and NDAs may protect data as trade secrets
III: Negative information may satisfy the requirements for “usefulness”
IV: It is determined based on ease of combination and cost, etc.

(*) <https://www.meti.go.jp/english/policy/economy/chizai/chiteki/pdf/0813mgtc.pdf>

4. Data protection by “Shared Data with Limited Access”

- We established a minimum provision “Shared Data with Limited Access” to protect valuable data under the UCPA in 2018 to keep balance between utilization and protection
- It may complement the TS protection and is more suitable for sharing data widely

According to survey in 2016, 60% or more of responding companies think that legal instruments for claim for injunction or damages against illegal use of data by others are necessary.



industry members

Even though weather data was provided to only paid members, it was distributed to their affiliates without permission. We call for measures to be able to claim for injunction against such distribution as well as deterrence against illegal provision.

When data was provided to a library for academic use only, a company downloaded a large amount of data from the library and provided others with reports created using the data as commercial products. We call for legal instruments to be able to claim for injunction against illegal users with no contracting relationship.

needs

<Shared Data with LA>

- Electromagnetic management
- Limited provision
- Significant accumulation

Sharing data

<Trade secrets>

- Secrecy management
- Non-public domain
- Usefulness

Keeping secret



5. Summary

- Trade secrets as well as Shared data with Limited Access have significant roles for data protection
- There is no cases of the new provision so far, however, we believe it's a good sign indicating that the data-sharing businesses is going well

