

Actions on IP for data protection in Japan

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Intellectual Property Policy Office
METI, JAPAN

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Summary

Actions related to IP and Data in Japan –Outline–

Intellectual Property Strategic Program 2016

“Specifically discuss the necessity of IP protection and IP system with regard to new data-related assets such as AI-created data, 3D printing data and DB whose creativity is unlikely to be recognized, taking into account the value being created in the market.”

“Committee to Review IP regarding New Data-related Assets” Report ①

Reviews IP system regarding to new data-related assets like data, creation by AI and training data

National Data Strategy

Shows [i] basic concept of the data strategy including goals, principles of ministry’s action, the role of government as a PF, [ii] Action items to be focused and action plans for implementation.

Intellectual Property Strategic Program 2021

Shows [i] current status, [ii] issues and [iii] direction of policies with regard to improvement of environment to promote the utilization of data which is the most important IP in this century.

2016

2017

2018

2021

Until Aug.2021

Contract Guidelines on Utilization of AI and Data

Explains main challenges, unresolved issues, model contract clauses and other key points in [i] contracts for utilization of data or [ii] contracts for the development and utilization of software using AI technology. Ver1.1 was released in 2019.

The Copyright Act, The Unfair Competition Prevention Act ②

CA : introduced “flexible limitation provision” to cope with progress of digitization and networking
UCA : introduced provision on “Shared Data with Limited Access” to protect valuable data

This presentation will focus on ① ② from legal perspectives to protect valuable data

Committee to Review IP regarding New Data-related Assets – Outline –

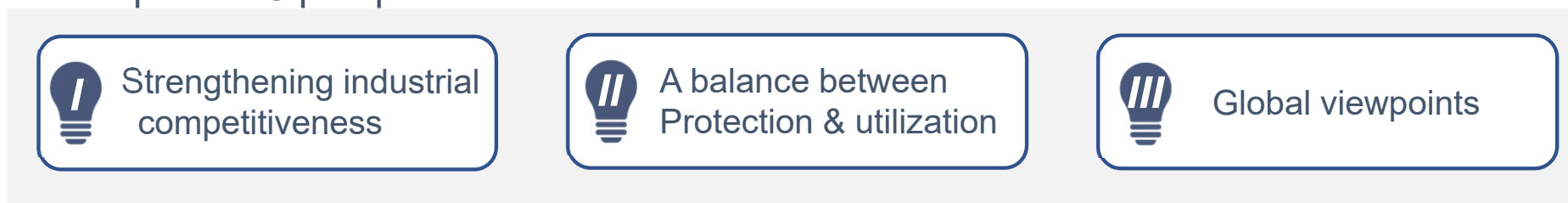
- Basic Information

- In the Secretariat of Intellectual Property Strategy Headquarters



- Discussions

- Review All IP systems including copyrights, industrial property rights and others
- The important 3 perspectives are as follows:



- Topics

1. IP system for promoting data utilization
2. IP system for promoting creation & utilization of AI

Committee to Review IP regarding New Data-related Assets – IP system for promoting data utilization –

- Background and Issues in 2016
 - The progress of IoT had brought an environment where we can collect and share big data efficiently and a certain legal basis with regard to utilization of data including personal information was being developed.
 - It was expected that data utilization including analysis of collected data or combination of owned data and other's data, will create new services that can reinforce competitiveness.
 - **Data utilization was not progressing because..**
 - Business models of data utilization and data distribution PF were not established sufficiently.
 - Concerns and anxieties on measures against data misappropriation still remained.

Committee to Review IP regarding New Data-related Assets –IP system for promoting data utilization–

- What should the IP system focus on?
 - Value of data itself
 - NOT value based on how to aggregate data, i.e. DB works
- What is targeted data for consideration ?

	Non-Personal data	Anonymized data	Data including personal info.
Private investment	Main Target		
Public money			

Valuable Data (Data/aggregation of data)

- Data that is unable to be protected by the existing IP rights
like patents or copyrights
- Data that calls for a certain investment or effort
to be collected /accumulated/managed (or to get the right to use)

Committee to Review IP regarding New Data-related Assets

–Japanese IP system for data protection in 2017–

	Requirement		Civil remedies	Criminal remedies	
	Protectable data <i>Subject matters were limited</i>	Unfair acts	Injunction / Claim for damages	Imprisonment / penalty	
Works ex. Database Works Article 12-2(1) of the CA*1	A database that, by reason of the selection or systematic construction of information contained therein, <u>constitutes a creation</u> [1] a highly advanced <u>creation of technical ideas</u> utilizing the laws of nature [2] an invention for which a patent has been granted [1] <u>secrecy management</u> [2] non-public domain [3] usefulness	Copy, etc. <u>without permission of right holders</u>	✓	✓	Non-creative data like operation data from factories are NOT protected
Patented invention Articles 2 (1) and 29 of the PA*2		Implementation, etc. <u>without permission of right holders</u>	✓	✓	
Trade Secret Article 2 (1) (iv)~(x) of the UCPA*3		Unauthorized acquisition/use, etc.	✓	✓	
Tort Article 709 of the CC*4	general data	intentionally/negligently infringed the rights or legally protected interests	✓ <i>Only compensation for damages</i>	✗	Basically IMPOSSIBLE to obtain an injunction
Contract (non-Performance) Article 415 of the CC	general data (depending on contracts)	acts in breach of contract	✓ <i>only contracting parties</i>	✗	IMPOSSIBLE to apply third parties

These remedies are not good enough to protect valuable data

*1 CA: Copyright Act *2 PA: Patent Act *3 UCPA: Unfair Competition Prevention Act *4 CC: Civil Code

The existing IP systems at that time might impede open innovation where knowledge is shared across business boundaries and collaborations are promoted

Committee to Review IP regarding New Data-related Assets – Approaches(Direction of our actions) –

1. Support for private sectors initiatives

- Formulate contract guideline on utilization of valuable data ★
- Construct good data distribution platform ★
- Do actions to enhance security, etc. ★

2. Approach to regulate unfair acts ★

- Examine what data should be protected and what acts should be regulated as new unfair competition acts in order to ensure fair competition order that would make it possible to provide and use data with trust, taking into account industrial practices

3. Grant of new data rights

- **Set an exclusive right**

It may adversely impede data utilization, which is not desirable

- **Set a restricted right for data utilization**

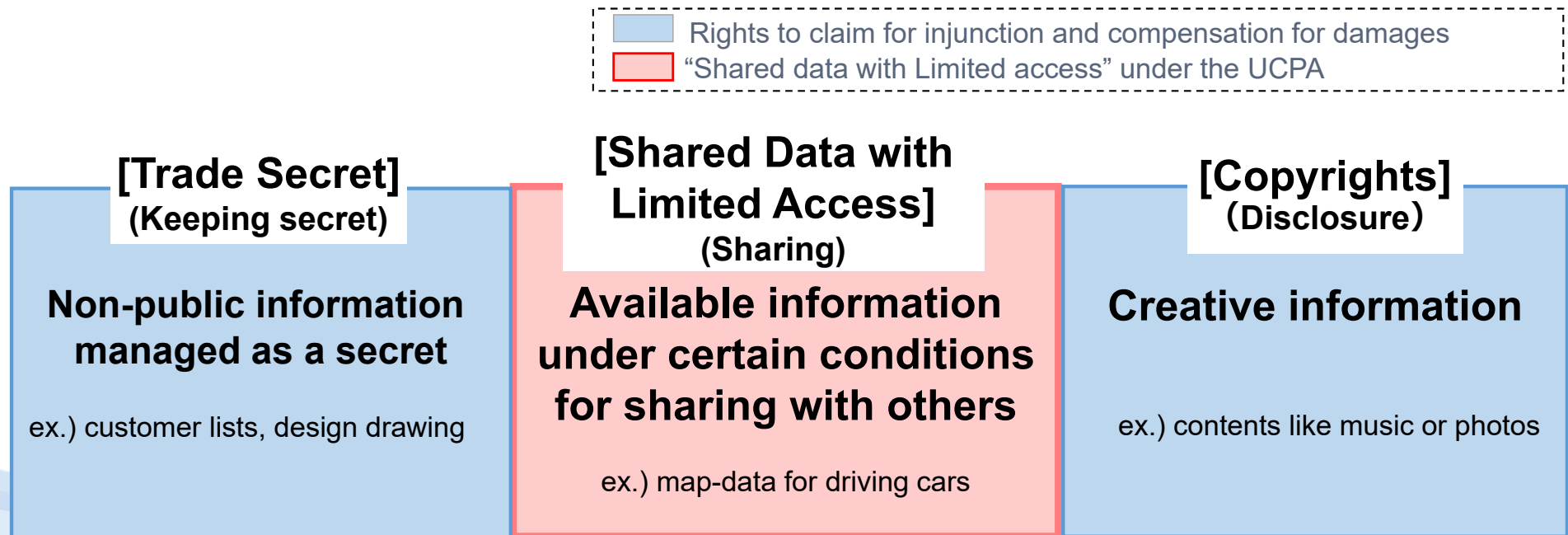
Restricted rights under FRAND terms might not promote data utilization because companies would avoid obtaining licenses

Rights to remuneration can NOT stop data misappropriation because the data holder can not claim for injunction with the rights

➡ 3. was NOT adopted at that time in 2017

Legislation on “Shared Data with Limited Access” – Establishment –

- Based on the above conclusion, we considered the revision of the UCPA
 - *UCPA: Defines unfair competition acts, remedies, etc. and provides measures, etc. for the prevention of unfair competition and for the compensation of damages caused by unfair competition so as to contribute to the sound development of the national economy
- By revision of the UCPA in 2018, we defined valuable data satisfying specific requirements as “Shared Data with Limited Access” and unauthorized acquisition/use, etc. as unfair competition acts and set forth remedies such as claim for injunction against the acts
- Taking into account balance between protection of data providers and one of data users, we decided that minimum provision to regulate highly malicious acts should be introduced.



Legislation on “Shared Data with Limited Access” – 3 requirements –

- Article 2(7)

The term “shared data with limited access” as used in this Act means technical or business information that is accumulated to a significant extent and is managed by electronic or magnetic means (Electromagnetic management) (Significant accumulation) as information to be provided to specific persons on a regular basis (Limited provision) (excluding information that is kept secret).

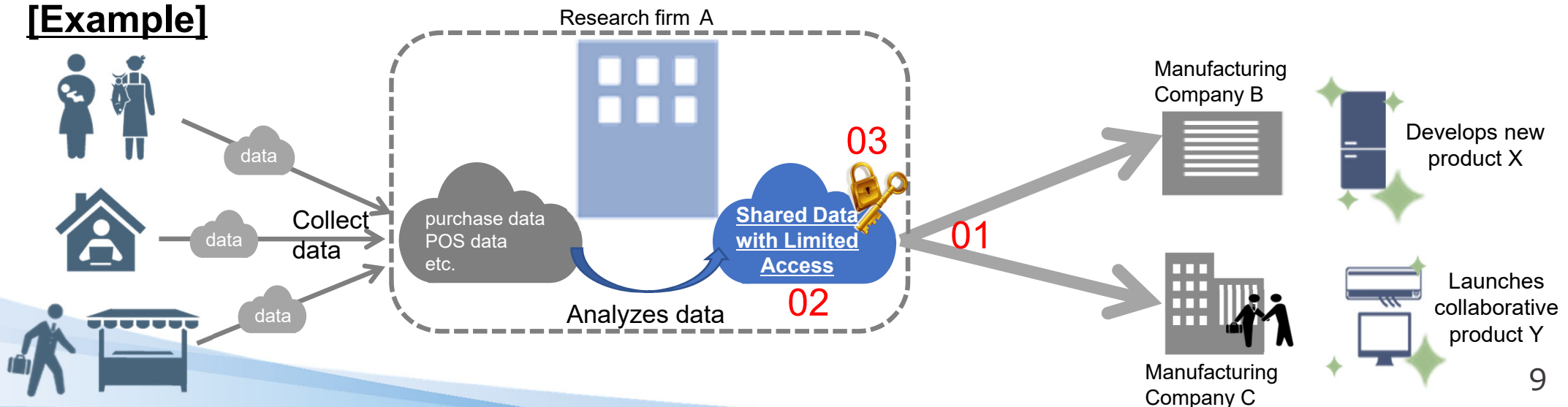
01 Limited provision

*Open data is out of its scope

02 Significant accumulation

03 Electromagnetic management, e.g. ID/Password, etc.

[Example]

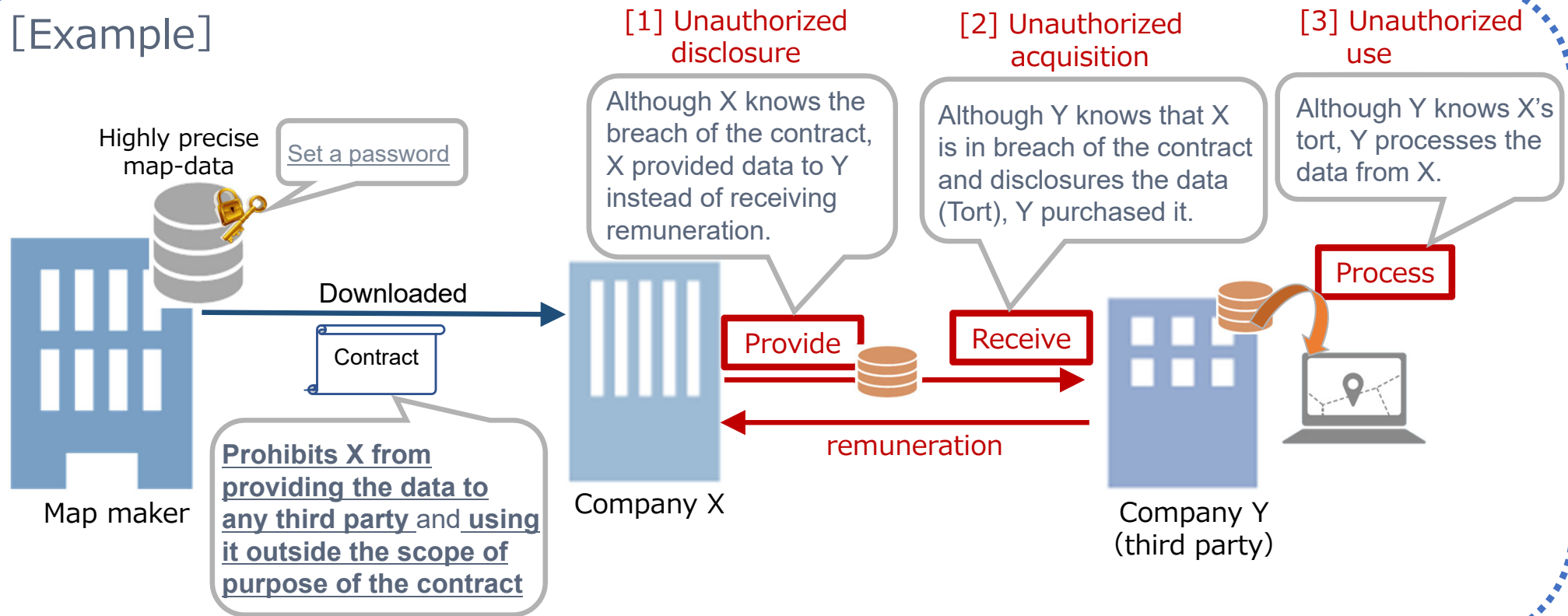


Legislation on “Shared Data with Limited Access” – unfair competition acts –

- The UCPA defines [1] acquisition, [2] use, [3] disclosure as unfair competition acts which directly infringe the interests of Shared-Data-with-Limited-Access holders

malicious

[Example]



※With regard to specific types of these unfair competition acts, please refer to “Guidelines on Shared Data with Limited Access” with the following link:

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

- What is the content of the Tips?
 - Specific business model by data utilization as well as key points to keep in mind and countermeasures from practitioner's perspectives on utilizing data

Tips for data utilization

Only available in Japanese



Detailed measures and examples in Q&A format for those who practice contracts

Guidance for data utilization

Available in English



Essential points of the Tips for those who want to grasp the outline



Cases of data utilization

Only available in Japanese

Released in 2021



Total 5 cases
(2 cases: data provider
3 cases: data PF)

Others – For your information –

- Committee to review IP regarding New Data-related Assets
 - The Report (only Japanese version is available):
https://www.kantei.go.jp/jp/singi/titeki2/tyousakai/kensho_hyoka_kikaku/2017/johozai/houkokusho.pdf
 - English Summary of the Report :
https://www.kantei.go.jp/jp/singi/titeki2/tyousakai/kensho_hyoka_kikaku/2017/johozai/houkokusho_e.pdf
- The revision of the Copyright Act in 2018
 - Guidance note (only Japanese version is available):
https://www.bunka.go.jp/seisaku/chosakuken/hokaisei/h30_hokaisei/pdf/r1406693_17.pdf
- Contract Guidelines on Utilization of AI and Data
 - Website in English
https://www.meti.go.jp/english/press/2019/1209_005.html
- National Data Strategy
 - Japanese version: <https://www.kantei.go.jp/jp/singi/it2/kettei/pdf/20210618/siryou3.pdf>
 - English ppt: https://cio.go.jp/sites/default/files/uploads/documents/digital/20210901_en_05.pdf
- Intellectual Property Strategic Program 2021
 - only Japanese version is available :
<https://www.kantei.go.jp/jp/singi/titeki2/kettei/chizaikeikaku20210713.pdf>

- Japan introduced the minimum legislation on “Shared Data with Limited Access”, taking into account a balance between protection and utilization.
- Excessive data protection may build a barrier against the progress of innovation as well as data utilization.
- Data utilization or its business can take place worldwide, so...



Harmonization of data protection systems
would be helpful for data holders*

*It is my personal opinion

Thank you for listening!

If you have any questions and comments,
please feel free to contact us:

[ip_policy_office\[at\]meti.go.jp](mailto:ip_policy_office@meti.go.jp)