Centre for Information Policy Leadership
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CIPL Response to the Japan Fair Trade Commission's Request for Information and Comments Concerning Generative AI and Competition

Centre for Information Policy Leadership (CIPL)

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CIPL Response to the Japan FTC Request for Information and Comments Concerning Generative AI and Competition

The Centre for Information Policy Leadership (CIPL)[1] welcomes the opportunity to respond to the Japan Fair Trade Commission's (JFTC) Request for Information and Comments Concerning Generative AI and Competition.

For more than 20 years, CIPL has been a thought leader on organisational accountability and a risk-based approach as key building blocks of smart regulation, responsible governance, and trusted use of data. CIPL has done extensive research into AI policy and the accountable development and deployment of AI. CIPL's *Ten Recommendations for Global Regulation* proposes a layered, three-tiered approach to AI regulation that would protect fundamental human rights and minimise the potential risks of harm to both individuals and society while enabling the responsible development and deployment of AI.[2] CIPL's recent report, *Building Accountable AI Programs: Mapping Emerging Best Practices to the CIPL Accountability Framework*, outlines best practices and case studies on how 20 leading organisations are responsibly developing and deploying AI through the lens of CIPL's Accountability Framework.[3]

CIPL has been closely following Japan's data-related legislative and regulatory developments for numerous years and has frequently engaged with relevant Japanese regulatory bodies handling data-related issues and regulations, including the Personal Information Protection Commission ("PPC") and the Digital Market Competition Headquarters ("DMCH").[4] In the context of CIPL's ongoing research in the context of the EU's recent digital regulations, in particular, the Digital Market Act[5], CIPL has

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[1] The Centre for Information Policy Leadership (CIPL) is a global privacy and data policy think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 85+ member companies that are leaders in key sectors of the global economy. CIPL's mission is to engage in thought leadership and develop best practices to ensure the responsible and beneficial use of data in the modern information age. CIPL's work facilitates constructive engagement between business leaders, data governance and security professionals, regulators, and policymakers around the world. For more information, please see CIPL's website at https://www.informationpolicycentre.com/. Nothing in this document should be construed as representing the views of any individual CIPL member company or of the law firm Hunton Andrews Kurth LLP. This document is not designed to be and should not be taken as legal advice.

[2] CIPL, "Ten Recommendations for Global AI Regulation", October 2023, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_ten_recommendations_global_ai_regulation_oct2023.pdf.

[3] CIPL, "Building Accountable AI Programs: Mapping Emerging Best Practices to the CIPL Accountability Framework", February 2024, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_building_accountable_ai_programs_23_feb_2024.pdf.

[4] CIPL Meeting with the Japan Personal Information Protection Commission, May 2017, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_ppc_delegation_meeting_final_agenda_9_may_2017.pdf

[5] CIPL, "Data Sharing Obligations Under the DMA: Challenges and Opportunities", May 2024, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/data_sharing_obligations_under_the_dma_-_challenges_and_opportunities_-_may24.pdf; CIPL, "Limiting Legal Basis for Data Processing Under the DMA: Considerations on Scope and Practical Consequences", May 2023, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_dma_limiting_legal_basis_may2023.pdf; CIPL, "Bridging the DMA and the GDPR - CIPL Comments on the Data Protection Implications of the Draft Digital Markets Act", December 2021, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_bridging_dma_and_gdpr_dec21.pdf

previously had the opportunity to provide comments on the Japan DMCH's Final Report on Competition within the Mobile Ecosystem in August 2023.[6] We commend the Japan FTC for creating this opportunity to consult with stakeholders to create policies enabling fair, free competition in the generative AI ("genAI") market in Japan. In this spirit, CIPL would respectfully like to offer the observations below.

1. Ongoing rapid growth of the Japanese AI market

Japan recognised early on that AI, and in particular genAI, has the potential to transform our lives and our economies positively. According to a market forecast by IDC, the AI systems market in Japan is currently valued at about USD 4.5 billion, with the Japanese Ministry of Internal Affairs and Communication predicting an increase to about USD 7.3 billion by 2027.[7]

Apart from innovative advances in scientific research aided by AI, there is widespread consensus that AI systems hold the potential to assist in solving key challenges. For example, genAI may help address potential labour shortages by augmenting or even replacing certain, easily automated tasks in sectors such as healthcare and manufacturing (e.g., resource management).

2. Availability of representative data

Access to sufficiently diverse and representative data sets is crucial across every stage of the AI lifecycle for the development of high-functioning models. At the model layer, this may often mean access to large publicly available data sets collected through responsible web scraping practices, which can be particularly important for smaller organisations that may not possess their own data or lack the resources to license large data sets. It is also critical to train models on the most appropriate type of data for the purpose of the model. For example, it is important to ensure that the data is representative of the Japanese language when training models to perform tasks specific to the Japanese market.

A recent study conducted on the EU's AI market suggests that EU AI start-ups and scale-ups, often seen as the incubators for new technology, view data quality and availability, as well as the complex regulatory landscape, as significant challenges to digital innovation.[8] The experience in Europe, with its high level of regulation in the digital sector,[9] demonstrates that the development of a competitive ecosystem will also depend on a legislative and regulatory approach built on adaptability, collaboration and an informed understanding of technological advancements. Organisations of all

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[6] CIPL, "Comments by the Centre for Information Policy Leadership on the Japan Digital Market Competition Headquarters' Final Report on Competition within the Mobile Ecosystem", August 2023, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/comments_by_the_cipl_on_the_japan_dmch_final_report_on_competition_within_the_mobile_ecosystem__english_version_.pdf

[7] International Trade Administration, "Japan Generative Artificial Intelligence", September 2024, https://www.trade.gov/market-intelligence/japan-generative-artificial-intelligence#:~:text=Japan's%20Ministry%20of%20Internal%20Affairs,and%20Finance%20are%20key%20industries

[8] Implement Consulting Group, "The economic opportunity of generative AI in the EU", September 2024, https://implementconsultinggroup.com/article/the-economic-opportunity-of-generative-ai-in-eu27

[9] Mario Draghi, "The future of European competitiveness", September 2024, https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en

sizes operating in Europe are currently unclear, for example, to what extent the GDPR, Europe's flagship data protection law, will allow the use of European personal data in the context of AI,[10]

To that end, open-source models provide access to high-quality, pre-trained AI models that anyone can use, modify, and build upon. Particularly for smaller players in the genAI market, open-source models can reduce potential barriers to enable innovation by allowing developers to utilise existing tools and build application layers upon readily available foundation models. Japan has steadily invested in growing domestic genAI research and infrastructure, and numerous domestic companies and universities are actively leveraging open-source models and publicly available datasets to develop and train their own models. The recent release of Fugaku-LLM marks a significant development in Japan's investment in genAI technologies.[11] With its enhanced Japanese language capability, this open-source AI model can be used to develop both commercial and non-commercial applications and provides Japanese organisations the opportunity to create AI applications specialised for the Japanese marketplace. Rakuten has also released a similar open-source LLM that is trained on both Japanese and English language data by continually training Mistral, an LLM from a France-based AI startup.[12]

Together with available proprietary models, these open-source models provide significant opportunities for continued innovation and growing competition in the Japanese AI market, both at the model and application layer.[13] CIPL encourages ensuring the availability of high-quality datasets that will enable effective model training specific to the Japanese market.

3. Scarcity of Talent

CIPL recognises that while highly skilled researchers, engineers, and technologists are essential for developing genAI models, there is a limited pool of such individuals, and it is becoming increasingly competitive to attract such talent. As we have outlined in our report, "*Building Accountable AI Programs: Mapping Emerging Best Practices to the CIPL Accountability Framework*", all organisations recognise the need for cross-functional, multidisciplinary, and multi-skilled teams that include data and AI scientists, researchers, and engineers. This is essential not only for continued innovation but also to ensure the responsible development and deployment of AI technologies with accuracy, fairness, privacy, safety, security, and transparency in mind. Cross-functional, multidisciplinary teams are necessary to create AI policies and governance that remain adaptable to rapidly changing technology. Furthermore, to address this growing need for diverse skillsets and expertise, organisations are working to either upskill their current workforce by offering professional growth opportunities for AI-focused training or hiring new talent to further diversify the skillsets within their teams.

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[10] This is currently the subject of an opinion from the European Data Protection Board, expected in December 2024.

[11] Kawasaki, "Release of "Fugaku-LLM" – a large language model trained on the supercomputer "Fugaku"", May 2024, https://www.fujitsu.com/global/about/resources/news/press-releases/2024/0510-01.html

[12] Rakuten Group, Inc., "Rakuten Releases High-Performance Open Large Language Models Optimized for the Japanese Language", March 2024, https://global.rakuten.com/corp/news/press/2024/0321_01.html

[13] Additional examples of use of open-source resources in Japan include Kobota Technologies' use of NVIDIA's NeMo platform to create a language tool specializing in speech recognition, Preferred Networks' use of Siemens' PowerPro software to design their next-generation AI chip, and RIKEN's AI initiatives for disaster response and recovery.

Government programmes to incentivise recruitment, hiring, and training of AI-related talent are also becoming more common. For example, the United States Office of Personnel Management has launched numerous programs alongside federal agencies to identify key skills and competencies needed for AI professionals and accelerate hiring across the federal government.[14] Key incentives include competitive pay, student loan repayment, increased pay leave, and workplace flexibilities.[15] CIPL has also observed great success when organisations partner with local institutions to recruit domestic talent. Early-career internships or mentoring opportunities help foster connections with domestic companies and allow individuals to see the full breadth of opportunities available to them. CIPL's research shows that, apart from external expectations to act responsibly, individuals generally want to work at companies that are developing and deploying technologies in an ethical, responsible way.

Conclusion

CIPL advocates for a nuanced regulatory approach that continues to recognise and adapt to the rapidly developing field of genAI. Existing regulatory frameworks need to remain fit for the purpose of genAI applications, including cross-regulatory cooperation between data protection and competition authorities, for example. CIPL recommends that regulators engage in active cross-sectoral dialogue[16] as well as industry, academia, and the public to ensure that existing requirements and new forthcoming guidance work harmoniously to roster responsible innovation while addressing the unique risks and concerns raised by genAI.

[14] US Office of Personnel Management, "OPM Highlights Key Actions Supporting AI Talent Surge to Recruit and Hire AI Professionals", May 2024, https://www.opm.gov/news/releases/2024/05/opm-highlights-key-actions-supporting-ai-talent-surge-to-recruit-and-hire-ai-professionals/#:~:text=In%20December%202023%2C%20OPM%20authorized,engineers%2C%20and%20management%20and%20program

[15] Drew Friedman, "Agencies should promote existing workplace flexibilities in federal AI hiring, OPM says", February 2024, https://federalnewsnetwork.com/artificial-intelligence/2024/02/agencies-should-promote-existing-workplace-flexibilities-in-federal-ai-hiring-opm-says/?readmore=1

[16] An example of successful cross-sectoral cooperation is the Digital Regulator Cooperation Forum in the UK.