

Privacy Protection in Japan:

Cultural Influence on the Universal Value

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Abstract

Of late, the right to privacy seems to have been universally acknowledged. With the circulation of data in an information society, the importance of protecting personal data has been widely recognised. Many developed countries have enforced laws that protect the privacy and personal data of individuals. However, Japanese generally seem to differ from Westerners in their assessment of the importance of privacy. In general, Japanese society has not been very sensitive to the protection of privacy, which is probably due to the Japanese cultural and social environment.

On the other hand, in April 2005, the Act for Protection of Personal Data was enforced in Japan. However, the impetus behind is not from the within Japan but external pressure exerted by the international community. Lack of fundamental understanding of importance of the right to privacy seems to make approach to privacy protection in Japan mere compliance with the Act. Moreover, this attitude toward the protection of personal data may put both organisations and individuals at risk in a global environment.

1 Introduction

In developed societies, individuals are aware of their rights, and the right to privacy has now been universally accepted. Legislation to protect privacy and personal data has been enacted in many developed countries. However, an understanding of the concept and the importance of privacy is not necessarily universal. For example, owing to certain socio-cultural and linguistic characteristics, Japanese people often consider the right to privacy to be a subjective and timeserving concept; they attach less importance to this right than do Westerners.

On the other hand, in line with the development of an information society, the Act for Protection of Personal Data was enforced in Japan in April 2005. This act has helped many people in Japan understand the value of personal data protection, and how important it is that business organisations as well as governments properly manage the personal data they have

collected and stored in databases. However, a fundamental lack of understanding with regard to the concept and the importance of privacy in Japanese society could distort how privacy is protected and put it in jeopardy.

This paper examines how cultural factors influence the sense of the right to privacy in Japan, and investigates how Japanese feel about and respond to privacy policies. In the next section, the concept of privacy and the importance of personal data protection are shown. In section 3, the characteristics of Japanese culture and the recognition of the concept of privacy in Japan is considered. Next, personal data use in the business organization, and the enforcement of the Act for Protection of Personal Data in Japan are explained in the section 4. Finally in section 5, the risks around privacy and personal data protection in Japan are analyzed.

2 The Right to Privacy in an Information Society

The right to privacy is a relatively new concept and the notion of privacy has been an evolving concept [Moor, 1988]. [Warren and Brandeis, 1890] defined it in 1890 as “the right to be let alone”. This classic definition was a result of rampant journalism at that time, which was often based on gossip. In the 1960 and ’70s the legal concept of privacy was expanded to include protection against government interference in personal decisions about contraception and abortion [Moor, 1988]. The advent of an information society has altered the interpretation of the right to privacy to “the individual’s right to control the circulation of information concerning him or her” [Westin, 1967; Horibe, 1988]. This modern definition implies a close relationship between privacy and personal data, although the protection of personal data is not identical to the protection of privacy. “Information privacy” which refers to concerns for privacy generated by personal databases and “communications privacy” which reflects the vastly expanded communication capabilities now attracts attention [Johnson, D.G. and H. F. Nissenbaum, 1995:262].

As the information society progresses, individuals have acknowledged how important it is to control one’s own personal information and to place stronger emphasis on protecting personal data. However, it is actually very difficult for anyone to control information about themselves today; a massive amount of personal data, including personally identifiable information (PII) has already been, and is still being, collected and stored in digital form in private and public databases. The ease with which digital data can be copied losslessly contributes to the uncontrollable distribution of information.

The development and widespread availability of information and communication technology (ICT) has made it possible for business organisations and governments to use personal data in order to provide individuals with desirable and timely goods and services, but it also raises serious concerns about invasion of privacy. OECD Guidelines on the Protection of Privacy and

Transborder Flows Personal Data [OECD, 1980] and Directive 95/46/EC [The European Parliament and the Council of the European Union, 1995] have addressed these concerns.

3 Japanese Culture and Privacy

De George [2003:40] has claimed that culture affects the notion of privacy; different societies have different views about what constitutes privacy, how important it is, and to what extent it needs or deserves protection. Japanese society has not been very sensitive to the right to privacy [Hiramatsu, 1993]. There is no Japanese word corresponding precisely to the English word *privacy*. Many Japanese use the word *puraibashi*, an adopted word for privacy, without clearly understanding its meaning [Murata, 2004]. For ordinary Japanese, privacy is an imported idea; some feel that the sense of a right to privacy may be subjective and timeserving because it means that anyone can arbitrarily reject interference by others. Ideas about privacy in Japan are related to the country's social and cultural environment.

Hayashi [1984:84-87] has claimed that rice agriculture has affected Japanese social characteristics; growing rice requires a collective decision-making process, making the group more valuable than the individual. Japanese generally place a high emphasis on group mentality, and believe that the formation of a well-rounded character is attained by learning to be cooperative with others. Therefore, in Japanese society, assertiveness is considered a vice and compromise is considered a virtue.

Doi [1967] has focused on the Japanese notion of *amae*, which means presuming on the good will of others. He suggested that the Japanese word *enryo*, which means that one holds back on the basis that one must not presume too much (*amae-ru*) on the good will of others, counter-balances this idea. In other words, an individual may be afraid that when not holding back, he/she might be considered impertinent and disliked accordingly. Doi also pointed out that *enryo* is an inverted form of *amae* and noted:

The Japanese, generally speaking, tend to dislike *enryo* in themselves but to expect it in others, a fact which is probably accounted for by the way in which the *amae* mentality dominates social life. Here also would seem to lie the reason why the idea of privacy, which more than anything else, perhaps, sets store by "considering from a distance", did not traditionally develop in Japan [Doi, 1967: 39].

It is surely significant in this connection that the Japanese term *uchi* (inside), as used in words such as *mi-uchi* (family circle) or *nakama-uchi* (circle of friends or colleagues), refers mainly to groups in which the individual himself or herself belongs. In Japan, little value is attributed to an individual's private realm as distinct from the group. This is related to the fact that the attribution of a positive value to *enryo* has always been

wanting in Japan. It is also associated with the fact that the Western idea of freedom has been slow to take root in Japan [Doi, 1967: 42].

A characteristic of Japanese linguistic culture is the frequent use of implication in communication; explicit description of even important things is often avoided. An adult is expected to be a mature communicator, i.e., to sense correctly the implied feelings, emotions, and thoughts of others, and to be skilful in *tatema* (what one says or writes in the way of polite fiction) and *hon'ne* (what one means, or naked truth).

Within the context of these socio-cultural and linguistic circumstances, insistence on the right to privacy as "the right to be let alone" indicates a lack of cooperativeness as well as an inability to communicate with others. The right to privacy, understood as "the individual's right to control the circulation of information concerning him or her", is considered a shameful excess of mistrust in relation both to a cooperative society and to those who collect, store, share, and use personal data. Consequently, the sense of a right to privacy is foreign and less important to Japanese society than it is in Western societies.

4 Personal Data Use and Regulation in Japan

4.1 Personal Data Use in Business Organisations

ICT's tremendous development and spread has enabled business organisations, including Japanese firms, to collect, store, process, use, and share huge amounts of personal data. Use of this data makes it possible for business organisations to satisfy ever-changing customer needs, to streamline business operations and, thus, to gain a competitive advantage.

Sharing of crucial personal data can also lead to organisations gaining business partners. Innovative business processes that use personal data about customers, such as customer relationship management (CRM) and supply chain management (SCM), enable firms to perform better. Use of personal data is vital in constructing efficient, effective business processes. Moreover, proper use of customer related personal data allows customers enjoy timely provision customised goods and services at lower price provided business organisations [Murata and Orito, 2004]. Indeed, B to C business allows tremendous benefits for individual customers, in exchange for their personal data provision.

However, use of personal data is a double-edged sword for business organisations as well as for individuals; it is inseparable from the risk of invasion of privacy. The idea of 'the more, the better', i.e. the quantity of data determines the quality of information, amplifies this risk. The right to privacy is an elusive concept. For example, whereas loyalty programmes have rarely been harshly criticised as threat to the right to privacy, radio frequency identification (RFID) is

frequently treated as a serious infringement upon privacy. Often, the same sales promotion information provided by a firm causes diametrically opposite responses from those who receive it: some welcome the provision of information because they find it useful; others claim that the provision of “junk” information infringes their right to privacy. Moreover, the present eBusiness environment, where massive amounts of personal data, including PII, are already stored in business databases and circulated among firms, makes the practical efficacy of the definition of the right to privacy as the right to control personal information dubious.

Any business that seems to violate the right to privacy may be the object of criticism, which may put the organisation’s trustworthiness and reputation in jeopardy. It is in the best interests of business organisations generally to minimise this risk by developing secure information systems and by taking measures to safely preserve any personal data on file. Simultaneously, from a social standpoint, the tremendous amount of personal data collected, stored, processed, shared, and used by business organisations may justify self-regulation or public regulation in order to protect computer-processed personal data.

4.2 The Act for Protection of Personal Data

Based on the idea that ICT could be a strategic technology in the 21st century, the Japanese government has adopted a policy to construct a “highly-networked information society” and is developing its infrastructure. The Act for Protection of Personal Data, which covers the private and public sectors, is part of the implementation of this policy; it was approved in May 2003 and enforced in April 2005.

The impetus behind the Act, which contains penalty clauses, did not come from within Japan; this is because of the aforementioned under-valuation of privacy. Instead, it came from external pressure exerted by the international community; the main sources were OECD guidelines and Directive 95/46/EC on the processing of personal data.

Directive 95/46/EC had a particularly significant effect on the Act because it includes the following clause: business activities in the global business environment in which personal data are shared among business organisations beyond national borders will not become permitted unless some form of regulation on protection of personal data exists in each nation in which the business organisations are based.

Orito [2005] performed a comparative study of personal data protection systems in Japan and the United States. This study compared the social and cultural backgrounds and approaches to personal data protection and privacy protection with regard to Japan’s Act of the Protection for Personal Data and the United States’ Safe Harbor which is an agreement between the United States and the European Union requiring that business organisations provide certification to the

Department of Commerce before entering into a transfer of personal data with EU member states. The origins of the concept of privacy lie within the United States, where privacy and personal data are protected by a number of regulatory bodies. These include federal regulation (FTC) and industry-specific self-regulation, along with many other individual acts. In contrast, Japan's socio-cultural environment has led to a less-clearly recognised idea of privacy; it is still regarded as an imported idea. In addition, there exist just several non government regulatory bodies in Japan. Accordingly, the Japanese Act of the Protection for Personal Data is more comprehensive and detailed than is the United States' Safe Harbor.

5 Risks Associated with Approaches to Privacy and Personal Data Protection in Japan

5.1 Approaches to Privacy and Personal Data Protection in Japan

Managers in many Japanese business organisations tend to consider the Act for Protection of Personal Data to be simply a risk factor [Orito and Murata, 2005]. In fact, the Act is not based on beliefs about the right to privacy; it simply guarantees trouble-free activity for Japanese business organisations in a domestic as well as global business environment. Business organisations that store and use personal data are taking a risk, because of the Act. In addition, enforcement of the Act has encouraged watchdog groups and mass media to monitor how business organisations handle personal data; they have reported a number of incidents of personal data being leaked from business organisations.

Many Japanese business organisations are now trying to take effective action to minimise risks, such as prosecution, associated with the Act. This can be very expensive; the Act has become an opportunity for Japanese information system vendors and ICT consulting firms to sell security systems that are in line with the law. It has also resulted, inevitably, in increased costs to system users.

In contrast, detailed discussion of the essential value of protecting privacy and personal data has been relatively rare. Because of the aforementioned socio-cultural and linguistic environment, the protection of privacy and personal data in Japan seems to be, simply, compliance with the Act.

Actually, when business organisations request personal data from individual consumers, the Act requires that they will not use personal data for other than the described purpose. However, this description is generally vague; it is not clear to the consumer what "no use other than for the described purpose" means. This is a regular problem for consumers, and it is often necessary to confirm content via a letter. In addition, consumers are given an opportunity to opt out, but they rarely exercise it.

5.2 Under-valuation of Risks Caused by Use of Personal Data

Japanese business organisations tend to focus on either the risks associated with the Act or on mere compliance with it. This tendency could indicate that business organisations undervalue the risks associated with the use of personal data. The risk of privacy invasion is increasing in the current environment of eBusiness, in which ICT application is critical and personal data are rapidly spread through business organisations to increase efficiency and efficacy.

When a business organisation infringes on an individual's rights by using personal data improperly, it risks a penalty. In addition, if society at large discovers a misuse of personal data, the business organisation's trustworthiness and reputation may be at risk. Therefore, if a business organisation is complacent with respect to its compliance with the Act for Protection of Personal Data, it may overlook other risks associated with the use of personal data.

If Japanese business organisations do not attempt to address privacy issues beyond abiding by the Act, this may raise ethical concerns. The following is an example:

In July 2001, the Mainichi Newspaper reported that Toppan Insatsu sold a mailing list to another catalogue shipper. A bankrupt catalogue shipper had created the list, and Toppan Insatsu had attached a security warranty to it. The manager responsible for the sale asserted that Toppan Insatsu had simply engaged in a legal business activity.

The environment surrounding Japanese protection of personal data may lead to criticism of Japanese business organisations, and even weaken their competitive edge within a global business environment where Western values in relation to privacy demand appropriate protection of personal data. It is likely, simultaneously, to lead to destabilisation in the Japanese environment.

From the social standpoint, the tendency that Japanese business organisations consider it is only necessary to abide by the Act in order to protect personal data and privacy is undesirable in terms that (a) it is incorrect and socially dangerous to assume that ethical behaviour is identical to compliance with the law, and (b) opportunity to deliberate about the essential importance and meaning of the right to privacy would be missed. Also, the comprehensive and detailed act for personal data protection may produce the contrary effect; all that one can do may be to peruse the law not to violate it. When some ethical problem with respect to personal data and privacy protection which the law fails to cover happens, policymakers may attempt to revise the law so that it becomes more comprehensive and detailed as long as privacy is foreign for Japanese people. This might, again, let people peruse the revised law without providing them with opportunity to understand social importance of privacy and personal data protection.

6 Conclusion

Japanese culture makes it difficult for ordinary Japanese individuals to understand how and why they should protect privacy beyond what the law requires. Therefore, Japanese privacy protection seems to be merely superficial. However, international demands relating to the protection of privacy and personal data are increasing. In the modern global environment, business and social infrastructures require the protection of privacy and personal data. As this requirement increases, it may amplify the risks Japanese business organisations take on when handling personal data.

Laws and regulations are the most important factor taken into consideration when Japanese generally consider risks and ethical issues associated with the protection of privacy and personal data. Because it does not appear that Japanese society will soon recognise the importance of protecting privacy and personal data, comprehensive legislation is required. Japanese social and cultural characteristics do not facilitate the implementation of measures leading to the protection of privacy and personal data; risks associated with the use of personal data will increase if such measures are not taken.

As time passes and as a result of enforcement of the Act, ICT growth, and influence from Western nations, Japanese people generally may become more sensitive to the importance of protecting privacy and personal data. However, it is not likely that Japanese sensitivity with regard to this issue will ever reach Western levels; such correspondence would require substantial time and effort. Therefore, it is not possible to claim that the sense of a right to privacy is a universal value.

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References

- De George, R.T. (2003), *The ethics of information technology and business*, Blackwell.
- Doi, T. (2001), *The anatomy of dependence: The key analysis of Japanese behavior*, Kodansha International.
- Hayahi, S. (1984), *Management and culture, Chuko-Shinsyo* (In Japanese).
- Hiramatsu, T. (1993), *Protecting telecommunications privacy in Japan*, *Communications of the ACM*, 36(8): 74-77.

- Hofstad, G. (1991), *Cultures and organisations: Software of the mind*, London: McGraw-Hill.
- Horibe, M. (1988), *Privacy and the advanced information society*, Tokyo: Iwanami (In Japanese).
- Johnson, D.G. and H. F. Nissenbaum. (ed)(1995), *Computers, ethics & social values*, Prentice Hall.
- Moor, J. H.(1988), Reason, relativity, and responsibility in computer ethics, *Computers and Society*, 28(1):14-21.
- Murata, K. (2004), Is global information ethics possible? Opinions on the technologically-dependent society, *Journal of Information, Communication and Ethics in Society*, 2(5): 518-519.
- Murata, K. and Orito, Y. (2004), Personal data use and morality in the ebusiness environment, *Journal of Electronic Science and Technology of China*, 2(3):116-121.
- OECD (1990), *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, online at http://www.oecd.org/document/18/0,2340,en_2649_34255_1815186_1_1_1_1,00.html accessed 15.6.2005.
- Orito, Y. and Murata, K. (2005), Personal data protection in Japan: Culture, tradition and business, *Proceedings of 50th General Meeting of Japan Society for Study of Office Automation*: 181-184 (In Japanese).
- Orito, Y. (2005), Strategic values for personal data protection: Comparative studies in the Japan and United States, *Studies in Commerce Graduate School of Commerce Meiji University*, 22: 353-372 (In Japanese).
- The European Parliament and the Council of the European Union (1995), *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data*, online at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML> accessed 15.6.2005
- Warren, S. D, and Brandeis, L. D. (1890), The right to privacy, *Harvard Law Review*, 4 (5): 193-220.
- Westin, A. F. (1967), *Privacy and freedom*, Athneum.