

CCIA Feedback for Japan's Draft AI Guidelines

In January 2024, Japan's Ministry of Internal Affairs and Communications and Ministry of Economy, Trade and Industry shared a draft of voluntary guidelines for companies using artificial intelligence titled "AI Guidelines for Business."¹

As a best practice, a flexible approach to governance of AI is crucial to support AI innovation and diffusion. This is particularly important as AI develops quickly and due to the general-purpose nature of AI technology. Imposing overly prescriptive rules while the technology still develops could not only slow innovation but also could quickly become outdated as global standards are themselves not yet fully formed. As such, the non-binding, risk-based, and proportionate method of guiding AI practices being pursued by Japan is a productive approach.

Japan's desire to receive input from a variety of stakeholders through a consultation process reflects a promising process. On behalf of the Computer and Communications Industry Association (CCIA),² below is specific feedback on Japan's draft AI guidelines:

- **Definitions should be consistent and aligned and responsibilities should be clearly delineated between developers, deployers and end users.** Guidelines for AI use should be carefully tailored and clearly separated for three different categories of Developer, Deployer and End User. This approach reflects international approaches such as the Hiroshima AI process³ and the European Union's AI Act.⁴ Unfortunately, although Japan's guidelines seek to include differentiated responsibilities for various entities involved in AI use cases, this approach departs from internationally-recognized categories by instead adopting the classification of AI Developer, AI Provider, and AI Business User. Japan should categorize these three sets of actors similarly to comparative AI guidelines globally to promote international consensus and alignment.
- **AI guidelines should not duplicate or impede on existing laws and regulations.** Japan's draft guidelines seek to address issues that are already addressed by other laws and governing bodies. This includes the recommendation: "Each AI business actor is expected to strive to maintain a fair competitive environment surrounding AI so that new business services that utilize AI are created and sustainable economic growth is maintained, and solutions to social issues are presented."⁵ The protection of a fair and

¹ Available in English at: https://www.soumu.go.jp/main_content/000923717.pdf

² The Computer & Communications Industry Association (CCIA) is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. For more information, please go to: www.cciainet.org.

³ <https://www.soumu.go.jp/hiroshimaaiprocess/en/documents.html>.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>.

⁵ https://www.soumu.go.jp/main_content/000923717.pdf at 19 and 12 ("For this reason, each AI business actor is expected to work together with society to avoid social division and provide opportunities for education and literacy so that the benefits of AI can be distributed to all people. In addition, it is expected to contribute to ensuring fair competition and promoting

competitive market is an important and reasonable policy goal, but these are covered by other laws and agencies, such as the Anti Monopoly Act and the Japan Fair Trade Commission.⁶ Adding a guideline in this separate context could lead to confusing overlap for both firms and regulators, as it is unclear how individual private entities should be expected to leverage a recommendation for market-wide goals (fair competition) as they develop and deploy AI. Further, Japan’s AI guidelines outline expectations for every AI business actor to “work together with society to avoid social division and provide opportunities for education and literacy” and to promote innovation.⁷ Goals such as promoting innovation, securing education and literacy, and ensuring social cohesion are primarily the responsibility of the government.

- **Proportionality should be centered in AI guidelines for industry actors.** For industry guidelines, whether voluntary or mandatory, measures should be reasonable and tailored for each situation and account for the benefits, risks, and costly burdens involved. It is positive that Japan’s draft guidelines include a specific recommendation that “these efforts be carried out voluntarily, taking into consideration the resource constraints of each AI business actor, considering the characteristics, uses, purposes, and social context of the AI systems and services that each AI business actor develops, provides, and uses.”⁸ Japan should include caveats that support this general assertion throughout the guidelines. For example, in the “Accountability” guidelines, the draft currently requires AI developers to “document and store information related to the above and make it available for reference when and where needed.”⁹ However, for a firm to store the volumes of data necessary to meet this obligation, the company would contradict strong data privacy. Therefore, language should be included to clarify that the requirements are reasonable and do not potentially mandate broader customer data collection.
- **Japan’s AI guidelines should align with international practices and standards.** AI is fundamentally a cross-border technology that relies on global alignment.¹⁰ It is therefore imperative that governments reach consensus on AI standards, such as that led by Japan through the Hiroshima AI process. As Japan advances guidelines in this space, it should strive for reflection of international standards. Where appropriate, the AI guidelines should adopt or otherwise reference international AI standards such as ISO 42001.¹¹

innovation so that new business services will be created, sustainable economic growth will be maintained, and solutions to social issues will be presented.”).

⁶ https://www.jftc.go.jp/en/legislation_gls/amended_ama09/.

⁷ https://www.soumu.go.jp/main_content/000923717.pdf at 12.

⁸ https://www.soumu.go.jp/main_content/000923717.pdf at 12.

⁹ https://www.soumu.go.jp/main_content/000923717.pdf at 18.

¹⁰ <https://ccianet.org/library/trade-principles-for-ai/>.

¹¹ Specific to establishing a management framework for organizations involved in developing, providing, or using AI-based products or services.