

DATA PRIVACY IN JAPAN: DO RECENT AMENDMENTS WEAKEN PRIVACY TO FOSTER 'BIG DATA'?

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ABSTRACT¹¹⁸⁵

This article shall examine two principal themes which each bear a reflection on the other. The first of these is the manner in which data protection and data privacy has evolved in Japan over time and how the Asian cultural context of respect towards the community has played a significant role in the formation of values relating to the protection of private life, including inter alia norms relating to data protection. In this respect, the second stream of this article shall reflect upon recent amendments to the Japanese Act of the Protection of Personal Information of 2003 and their implications on privacy and on the collection and commercialization of 'Big Data', in the context of the growing importance of Big Data in the entire world but also in Japan, which is linked to increasing computing power and more complex algorithms that allow for deeper data mining and information analysis.

KEYWORDS: DATA PROTECTIONS – DATA PRIVACY – BIG DATA – JAPANESE LAW – COMPARATIVE LAW – IT LAW

¹¹⁸⁵ This article was reviewed by Dr Thomas Bugeja LL.D.

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1. Introduction

Big Data has been spoken of as 'something new and important taking place to the role of data in business and society'.¹¹⁸⁶ Information flows in an era of abundant data are changing the relationship between technology and the role of the state, and it could be said to be universally agreed that most current laws relating to privacy were conceived with paper records in mind and were not originally intended for networks and largescale data sets. In a world where all information is interconnected, there is a broad scope for the analysis of principles that do in fact take into account vast quantities of data, even if these are emerging from legal cultures that are geographically distant from the European Union and its general harmonised European framework for data protection.

In today's world, the right to a private life is widely recognized as a universal human and fundamental human right, enshrined within the Universal Declaration on Human Rights¹¹⁸⁷ and the European Convention of Human Rights.¹¹⁸⁸ Despite this, different cultures and different peoples within such cultures each have their own understanding of what is privacy, and how far should a country's or society's norms protect privacy. One of the main goals of this paper is to look closely at the legal and societal culture existing in Japan, which manifests itself in the law that regulates the protection of personal data, namely, the Act on the Protection of Personal Information of 2003 and the recent significant recent amendments to this law which reflect a discernible intention on the part of the legislator to foster the use of Big Data by allowing businesses to exploit the economic value of such information, as shall be seen in greater detail throughout the course of this paper.

2. A Socio-Historical Context to Data Privacy in Japan

¹¹⁸⁶ 'Elusive big data: The thing, and not the thing' (The Economist, February 18 2013) <<http://www.economist.com/blogs/graphicdetail/2013/02/elusive-big-data>> accessed 23 July 2016.

¹¹⁸⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR) art 12, No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

¹¹⁸⁸ European Convention on Human Rights (ECHR) art 8(1), Everyone has the right to respect for his private and family life, his home and his correspondence.

The very notion of privacy can trace its roots in a Western culture,¹¹⁸⁹ where the understanding of privacy itself differs between Europe and North America. Whereas European data protection and privacy law is the natural outcome of centuries-long revolt against privileges of status as epitomised by the French Revolution of 1789 and emphasises respect and dignity of the person,¹¹⁹⁰ the USA understanding emerges from leading cases such as *Katz v United States*,¹¹⁹¹ where the US Supreme Court held that the police needed a warrant under the Fourth Amendment to the Constitution to carry out wiretapping activities. The judicial thinking in this ruling pivots on concepts of liberty from social anxieties and from the powers of police and other government officials. The Japanese understanding of the concept of privacy and the protection of private life, which is similar to a certain extent to the general Asian culture, has been traditionally regarded as a symbol of selfishness or of self-centredness. The extension of this statement to the diversity of Asian peoples across the great Asian continent could easily be construed as being an excessively broad generalisation, however the author does so with caution and the support of academic writers.¹¹⁹² Japanese society boasts of a long history that is built around respect and prestige of the community and the public, as reflected in the Japanese historical concept of the *Bushi-do*, according to which samurai fight in the interest of their *Syo-gun*, or the head of the community, rather than for their own individual interest.¹¹⁹³ Japanese awareness of privacy has been relatively small as a result of deeply-rooted values such as *meshi-hoko*, which refers to the belief that one should 'devote oneself to the public, sacrificing one's private realm'.¹¹⁹⁴ Yet, although the tradition of communitarianism has in turn prevented the development of an elaborate culture of the protection of privacy as a legal matter in Japan, the rapid proliferation of technology and communications in all sectors of life, work and commerce within this same community has in turn led to a growing public concern to enact measures that have the protection of privacy as their overreaching aim.

The first Japanese court to make considerations towards the concept of privacy was the Toyko District Court in 1964, acknowledging that the 'right to privacy is recognized as the legal or protection of the right so as not to be disclosed of private life'.¹¹⁹⁵ Further cases in subsequent years continued to recognise the

¹¹⁸⁹ Hiroshi Miyashita, 'The evolving concept of data privacy in Japanese law' (2011) 1 International Data Privacy Law 229, 230.

¹¹⁹⁰ James Q Whitman, 'The Two Western Cultures of Privacy: Dignity Versus Liberty' (2004) 113 Yale Law Journal 1151, 1163.

¹¹⁹¹ 389 US 347 (1967).

¹¹⁹² Hiroshi Miyashita, 'The evolving concept of data privacy in Japanese law' (2011) 1 International Data Privacy Law 229, 230.

¹¹⁹³ *ibid.*

¹¹⁹⁴ *ibid.*

¹¹⁹⁵ Judgement of the Tokyo District Court, 28 September 1964, *Hanrei-jiho* vol 385, 12.

importance of the protection of private life, gradually overcoming the traditional cultural aversion towards a private life and moving towards a recognition of privacy as a right and interest, in spite of there being no written law at the time providing for such right. Indeed, the first piece of legislation dealing with privacy was enacted in 1988, in the form of the Act on the Protection of Computer Processed Personal Information Retained by Administrative Organs. This law was considered to be a reaction against the advancement of technology, enacted for the purpose of the protection of personal information processed by administrative organs.¹¹⁹⁶

Present-day privacy legislation to protect personal data was passed by the Japanese Diet in 2003 through the Act on the Protection of Personal Information (Hereinafter referred to as 'PIPA' or the 'Act'), following two years of controversy and after having been defeated once in the Diet due to fierce resistance by the mass media.¹¹⁹⁷ The Act came into force in 2005 and is firmly rooted in the data protection principles enshrined in the OECD Guidelines of 1980,¹¹⁹⁸ however it has been noted in a detailed 2009 analysis that the data privacy principles rarely go beyond the OECD model to achieve the higher standards set by the European data protection Directive.¹¹⁹⁹ Since 2003, the Act has been amended in a few instances, being initially reviewed based on the supplementary resolution of the National Diet, by both the House of Representatives (*Shugiin*) and the House of Councillors (*Sangiin*). At the time, the Quality-of-Life Council discussed major issues relating to the Act, albeit deciding against carrying out any amendments; this opinion was submitted to the Prime Minister of Japan. The main goal of the Act's review was to deal with the many cases of 'overreaction' that arose from overzealous applications of the privacy and protection of personal information that were rendered necessary ensure compliance with the provisions of the Act, leading to reported cases where local governments were reported to have refrained from releasing personal information following an earthquake even when this was necessary in order to provide effective assistance to vulnerable persons such as the elderly or disabled persons.¹²⁰⁰ Other cases included instances whereby apartment buildings stopped listing names of residents at

¹¹⁹⁶ Hiroshi Miyashita, 'The evolving concept of data privacy in Japanese law' (2011) 1 International Data Privacy Law 229, 232.

¹¹⁹⁷ *ibid.*

¹¹⁹⁸ OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (*OECD*)

<<http://www.oecd.org/internet/ieconomy/oecdguidelinesontheprivacyandtransborderflowsofpersonaldata.htm>> accessed 23 July 2016.

¹¹⁹⁹ Graham Greenleaf, 'Country Studies—B5 Japan' in D Korff (ed), *Comparative Study on Different Approaches to New Privacy Challenges, in Particular in the Light of Technological Developments* (European Commission, Directorate-General Justice, Freedom and Security 2010) <<http://ssrn.com/abstract=2025557>> accessed 23 July 2016.

¹²⁰⁰ Hiroshi Miyashita, 'The evolving concept of data privacy in Japanese law' (2011) 1 International Data Privacy Law 229, 234.

their doorbells, and hospitals stopped posting patient names outside hospital rooms.¹²⁰¹ Such issues dealt with through amendments to the Basic Policy on the Protection of Personal Information issued under the Act and certain guidelines, rather than by amending the text of the Act itself, which by now incorporates commitments by the government to curb problems of ‘overreaction’, considers the possibility of contributing to cross-border cooperation in international fora such as the OECD, encourages the publication by businesses of their privacy policies, and exempts security measures from publicly available information.¹²⁰²

Today’s generation of Japanese citizens are well aware of the importance of privacy protection and understand the importance of the safeguarding of personal information as an aspect within the notion consumer protection. Moreover, within the context of modern-day Japan, it is noteworthy to observe at this stage of the discussion that the post-war generation in Japan has mostly experienced economic prosperity, marred by a short intermediate period of economic stagnation since the 1990s. Nonetheless, incumbent Japanese Prime Minister Shinzō Abe, re-elected to power in 2012, believes that his ‘Abenomics’ strategy will reverse this trend; a crucial political and economic issue which is interesting to note in view of the current developments in data privacy rules that touch upon Big Data.

3. ‘Big Data’: a Digital Sea of Information Ripe for the Taking?

3.1 Defining ‘Big Data’

Big Data is a term that has carried some hype in recent years and is being adopted in everyday language and news-items often without second thought as to its meaning. However, in reality, it is a term which has been in use since the 1990s, most likely originating in Silicon Valley.¹²⁰³ Before the advent of the current decade’s generation of computing power, the term Big Data was used during the era of mainframe computers to refer to a quantity of information that was too large to be processed. Over time, the definition of this term has evolved to refer to the massive quantities of data that can be effectively analysed create a benefit towards society or for a particular economic activity or interest.¹²⁰⁴ Among the generally accepted definitions of Big Data is that offered by IBM,

¹²⁰¹ Sekiguchi Waichi, ‘“Big Data” Raises Big Legal Questions in Japan’ (*Nippon*, 28 November 2014) <<http://www.nippon.com/en/in-depth/a03602/>> accessed 30 July 2016.

¹²⁰² Hiroshi Miyashita, ‘The evolving concept of data privacy in Japanese law’ (2011) 1 *International Data Privacy Law* 229, 234.

¹²⁰³ S Arbesman, ‘Deflating the hype on big data’ (*The Japan Times*, August 21 2013) <<http://www.japantimes.co.jp/opinion/2013/08/21/commentary/world-commentary/deflating-the-hype-on-big-data/#.Vo5vjH1mp7t>> accessed 30 August 2016.

¹²⁰⁴ Sekiguchi Waichi, ‘“Big Data” Raises Big Legal Questions in Japan’ (*Nippon*, 28 November 2014) <<http://www.nippon.com/en/in-depth/a03602/>> accessed 30 August 2016.

which characterizes it by the three V's of volume, variety and velocity, and the additional two V's of veracity and value.¹²⁰⁵ Research firm International Data Corporation Japan offers a narrower definition, 'data amounting to 100 terabytes or more,' 'streaming data, including voice, music and images' or 'data whose amount grows by 60 percent or more every year'¹²⁰⁶ but the essential conclusion that may be drawn from the differing definitions remains the same.

Data cannot any longer be regarded as a static tool whose usefulness is finished once the purpose for which it was collected was achieved (such as once a search query has been processed by a search engine such as Google) but rather, it has become an essential raw material of business, a vital economic input, used to create a new form of economic value 'to become a fountain of innovation and new services'.¹²⁰⁷ Once the volume of information available became so large that the quantity being examined no longer could be processed by the computers typically used for this purpose, new tools were developed to facilitate the achievement of the data's potential, such as Google's MapReduce and its open-source equivalent, Hadoop, originally developed by Yahoo.

3.2 Big Data, its Emergent Growth, and Privacy Concerns in Japan

Japan and its IT industry, home to technology giants such as Sony, Nintendo, and FujiSoft amongst many others, is no stranger to the vast quantities of data and the potential which this, if properly processed, can accrue. Abe's government has expressed its intention to turn Japan into one of the world's leading IT nations, and it has been demonstrated that a part of the way to achieve this goal is to provide a strategy for 'Big Data'. This emerged clearly with the publication of the government's proposals for the first significant changes to the PIPA,¹²⁰⁸ which upon reading leave little doubt of the intention to make it easier for 'Big Data' processing of personal information and thereby harness the potential of such data. It has been reported in the Japanese press that spending on Big Data in

¹²⁰⁵ 'What is big data?' (*IBM*) <<https://www-01.ibm.com/software/in/data/bigdata/>> accessed 24 July 2016.

¹²⁰⁶ Hiroko Nakata, "Big data' – a digital sea of personal info ripe for the taking?" (*Japan Times*, 18 June 2013) <<http://www.japantimes.co.jp/news/2013/06/18/reference/big-data-a-digital-sea-of-personal-info-ripe-for-the-taking/#.Vo-M3PkrLIU>> accessed 24 July 2016.

¹²⁰⁷ Viktor Mayer-Schönberger and Kenneth Cukier, *Big Data: A Revolution that Will Transform how we Live, Work and Think* (Houghton Mifflin Harcourt 2013) 5.

¹²⁰⁸ Government of Japan, Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society (IT Strategic Headquarters), 'Outline of the System Reform Concerning the Utilization of Personal Data' (24 June 2014) - <<http://kipis.sfc.keio.ac.jp/wp-content/uploads/2014/07/English-Translation-of-Japanese-Government-Proposal-on-Privacy.pdf>> accessed 30 August 2016.

Japan is expected to grow by an average of 39.9 percent each year until 2016,¹²⁰⁹ and it has been reported by IDC that the Big Data technology and services market is forecasted to grow to \$48.6 billion by 2019.¹²¹⁰

There exists an evident growing tension between individuals' interest in protecting their privacy and companies' interest in making commercial use of anonymised personal information obtained by them and which constitutes Big Data. This concern is not particularly tied to any one country, however recent events happening in Japan have certainly helped to bring this unease to the fore there. In July 2014, for instance, a scandal emerged when personal information on elementary school children and their parents held by Benesse Holdings Inc, a major Japanese correspondence education and publishing firm, was leaked. Observers of this incident noted that the scandal could be said to have been the unintended outcome of the inability to obtain information legitimately from the state's Basic Resident Registers. This consequently led to the sale of information 'through the back door' by organisations or name-list traders who compiled or obtained databases of personal information and then illicitly sold this to marketers or other interested parties. A further data privacy incident that occurred before the passing of these new amendments came about when a partnership between the East Japan Railway Company, a major passenger railway company in Japan, and Hitachi Ltd, a Japanese multinational conglomerate company headquartered in Tokyo, became subject of public outcry. In the course of this partnership, East Japan Railway Company collected and anonymized passenger data collected from the railway's contactless smart card and e-money terminals, and then sold this collection of 'big data' to third party companies without passengers having been informed of this arrangement. East Japan Railway Company insisted that identification numbers had been deleted so as to render the information, containing birth dates, gender, stations travelled to and from, train times and train fares, anonymous. The supplied data was then used by Hitachi to start a new service which provides marketing information relating to the areas around the train stations concerned, raising doubts among several customers as to whether it had been operating in good faith.¹²¹¹ This case signalled a growing need to address the legitimate concerns of

¹²⁰⁹ S Arbesman, 'Deflating the hype on big data' (*The Japan Times*, August 21 2013) <<http://www.japantimes.co.jp/opinion/2013/08/21/commentary/world-commentary/deflating-the-hype-on-big-data/#.Vo5vjH1mp7t>> accessed 30 August 2016.

¹²¹⁰ 'New IDC Forecast Sees Worldwide Big Data Technology and Services Market Growing to \$48.6 Billion in 2019, Driven by Wide Adoption Across Industries' (*IDC*, 9 November 2015) <<http://www.idc.com/getdoc.jsp?containerId=prUS40560115>> accessed 30 July 2016.

¹²¹¹ 'Privacy rights and 'Big Data' (*The Japan Times*, 31 July 2014) <<http://www.japantimes.co.jp/opinion/2014/07/31/editorials/privacy-rights-big-data/#.Vo42jH1mp7u>> accessed 30 July 2016; Sekiguchi Waichi, "'Big Data' Raises Big Legal Questions in Japan' (*Nippon*, 28 November 2014) <<http://www.nippon.com/en/in-depth/a03602/>> accessed 30 July 2016.

the persons on whom data is held by crafting rules that regulated the commercial use of personal data, ensuring that persons are informed of what information is being supplied to others, even if this is done anonymously, and to set up an independent third-party data protection organ that would be empowered to supervise the implementation of rules whilst having sufficient power to effect enforcement against breaches of such rules.

4. Amendments to the PIPA

4.1 Overview

The Japanese Diet passed amendments to the PIPA on September 3, 2015, following an original proposal issued earlier in June 2014, and which will come into effect within two years from them being passed into law. The amendments may be observed to be based on three pillars, namely, the utilisation of personal data in 'the age of Big Data; the protection of privacy to meet with the expectations of individuals; and revisions related to globalisation.¹²¹² The earlier 2003 enactment of the Japanese data privacy law had in effect been deemed to be among the weakest laws of any Asia-Pacific country that has such type of legislation;¹²¹³ such criticisms have now been countered through the amendments that have created restrictions on overseas transfers of personal data without the consent of the data subject; requirements for disclosure of personal data; correction and deletion of such data upon request or where no longer necessary; a definition of and stricter rules applying to sensitive personal information; and provisions explicitly catering for cooperation with overseas enforcement agencies. A thorough examination of these changes to Japanese privacy law is however somewhat beyond the scope of this article, save the necessity to note here that once these provisions come into force, Japanese data protection law will be brought to a position that is similar to that in the majority of other Asian or Asian-Pacific countries, that is, a position stronger than the basic OECD principles, but not as stringent as the requirements laid down by the European Union Directive and forthcoming Regulation.

These amendments were described in an ambiguous 'Outline'¹²¹⁴ which accompanied the proposed amendment text. Greenleaf notes that 'the underlying

¹²¹² Graham Greenleaf and Fumio Shimpo, 'The Puzzle of Japanese data privacy enforcement' (2014) 4 *International Data Privacy Law* 139, 154.

¹²¹³ Graham Greenleaf, *Asian Data Privacy Laws: Trade and Human Rights Perspectives* (OUP 2014) 25.

¹²¹⁴ Government of Japan, Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society (IT Strategic Headquarters), 'Outline of the System Reform Concerning the Utilization of Personal Data' (24 June 2014)

purpose of the reforms is primarily to facilitate businesses and government to be able 'to utilise personal data [...] which has a high usage value'. The intended aim of the reform is evidently to allow Japanese businesses to fully use and exploit emerging Big Data analysis methods, and to support 'the ongoing creation of innovation in Japan through the emergence of new industries and services'.¹²¹⁵ This political intention behind the amended legislation is also in line with the Abe administration's position to facilitate the businesses' use of Big Data for development, sale and advertising of new products and services, with a view of contributing to the stimulation of large economic benefits.¹²¹⁶

4.2 The Regulation of 'anonymous' Big Data

The noted highlight of this amendment is that it creates a new category of personal information which has been rendered anonymous. This in effect is a category of 'reduced identifiability' to which a modified set of rules applies, and which prior to these new rules was widely perceived to be a "Grey Zone" of regulation. The fundamental piece of this new rule is that "anonymised" personal data that has been stripped of all personal identifiers such as names and dates of birth may not be freely transferred to third parties, including companies who would proceed to use this data for marketing and business purposes, without the subject's consent. The law safeguards the consumer by requiring that the transfer of anonymised information complies with specific stringent requirements when disclosing and processing the data. Such conditions include publicising the nature of the information disclosed as well as the manner through which the data has been provided to a third party, and by making a report on this disclosure to the Personal Information Protection Committee (Hereinafter referred to as 'PIPC'), and which shall be discussed in greater detail below. The third parties receiving the anonymised data must be informed that they are receiving this particular type of information. Any individual making use of such data is forbidden from comparing it with other information in order to attempt to re-identify it, and appropriate security measures must be adopted.¹²¹⁷

This new measure intends to replace a previous rule which required an individual's prior consent before the disclosure of such person's personal

<<http://kipis.sfc.keio.ac.jp/wp-content/uploads/2014/07/English-Translation-of-Japanese-Government-Proposal-on-Privacy.pdf>> accessed 30 August 2016.

¹²¹⁵ Graham Greenleaf, 'Japan's Proposed Changes: Weaken Privacy to Foster 'Big Data' (2014) 130 Privacy Laws and Business International Report 23, 25.

¹²¹⁶ 'Privacy rights and 'Big Data' (*The Japan Times*, 31 July 2014) <<http://www.japantimes.co.jp/opinion/2014/07/31/editorials/privacy-rights-big-data/#.Vo42jh1mp7u>> accessed 30 July 2016.

¹²¹⁷ Graham Greenleaf, 'Japan's Proposed Changes: Weaken Privacy to Foster 'Big Data' (2014) 130 Privacy Laws and Business International Report 23, 23-25.

information to a third party occurred, and also allowed the individual the power to withdraw such prior consent so as to stop or discontinue the data transfer. Consequently, this position led to severe administrative problems in the context of outsourcing and upon adoption of data analysis techniques. Due to this, amendments to the Act distinguish between personal information and anonymised or pseudonymised personal information. This new category of information no longer requires prior consent when it is being disclosed or processed.

The new concept of 'anonymised personal information' in the Act is defined as 'information related to an individual that was obtained by processing personal information such that a specific individual cannot be identified, and so that such personal information cannot be restored'.¹²¹⁸

The new amendments have transformed the small authority solely supervising Japan's new ID number system set up in 2014 known as the Specific Personal Information Protection Commission (Hereinafter referred to as 'SPIPC') into a new authority having a broader scope, to be known as the PIPC. The PIPC will now have jurisdiction in relation to the entire private sector, excluding the supervision of the public sector; a power which will remain within the Ministry of Internal Affairs and Communications, with the exception of the residual power of the PIPC to ask for reports to be drawn up by the Ministry in question. As seen above, this is the authority to which disclosures of the transfer of anonymised sets of data has been made. It has been constituted with strong provisions concerning its independence, and its members are to be appointed by the Prime Minister with the consent of both houses of the Diet. Much of the delegated legislation concerning data privacy will emanate from the independent authority of the PIPC, and among its most important tasks is its role of formulating the PIPC Rules, which will serve to implement the Act itself.

The PIPC is also accorded significant powers of enforcement, although it is noteworthy here to point out that Greenleaf seemingly expresses doubt as to whether it will actually choose to make use of such powers.¹²¹⁹ Indeed, there has been little to no enforcement of Japanese data privacy law throughout this past

¹²¹⁸ G Greenleaf, *Japan: towards international standards, except for 'big data'*, Privacy Laws & Business International Report 135, 136, 9 June 2015. The translation of the new law quoted within this article is based on an unofficial English translation, checked by Japanese experts of the 2003 Act, as amended by the proposed Bill.

¹²¹⁹ Graham Greenleaf, 'Japan: Toward International Standards - Except for 'Big Data'' (2015) 135 Privacy Laws & Business International Report 12, 13; 'the PIPC has significant powers, if it chooses to use them'.

decade since the original enactment of the PIPA in 2003,¹²²⁰ and despite the potential to start afresh, as is evident in the wide reach of the new enforcement powers, this cannot be said to be reflected with the penalty levels. Among its functions are its powers to mediate complaints, investigate, give advice, find breaches, make recommendations, and if these are not followed, give orders that must be followed.¹²²¹ However, the same authority cannot issue administrative penalties, unlike its counterparts in many EU Member States, as this depends on prosecution, whereupon fines for breaches of the provisions of the Act will have a relatively trivial cap of ¥300,000 (US\$2,500 or €2,300). This contrasts sharply with the quantum of fines imposed in the USA or within individual EU Member States. For instance, in Malta, the maximum penalty for a breach of a provision contained in Maltese data protection laws may amount to up to €23,300, or six months imprisonment, or in certain circumstances, both.¹²²²

Arguably, should the procedures required by the law ensure that anonymisation is complete and identification of the individuals concerned is impossible, then it may not be cause for concern about an invasion into personal privacy. The procedures require deletion of 'all individual identification codes contained in the personal information (including by replacing such individual identification codes with other individual identification codes in a random manner that will not allow the restoration of the individual identification codes)' wherever any piece of information contains 'an individual identification code'. On the other hand, where the information concerned does not contain this 'individual identification code', anonymisation is to be achieved by 'deleting a part of the description contained in the personal information (including replacing such descriptions with other descriptions in a random manner that will not allow the restoration of the part of the descriptions).'¹²²³ If it can be widely agreed among digital forensic and identification experts that such measures will indeed succeed in achieving the required standard of anonymity required by the law, that is, that 'a specific individual cannot be identified, and so that such personal information cannot be restored', then the new law could prove itself to be a ground-breaking means of regulating the proliferation of Big Data in business, and a role model for other countries seeking to enact legislation in this area. However, the caveat to all of this is that it is likely 'questionable',¹²²⁴ to use the words of Greenleaf, that

¹²²⁰ Graham Greenleaf and Fumio Shimpo, 'The Puzzle of Japanese data privacy enforcement' (2014) 4 *International Data Privacy Law* 139-154.

¹²²¹ Graham Greenleaf, 'Japan: Toward International Standards – Except for 'Big Data'' (2015) 135 *Privacy Laws & Business International Report* 12, 13.

¹²²² Data Protection Act, Chapter 440 of the Laws of Malta, art 41.

¹²²³ Graham Greenleaf, 'Japan: Toward International Standards – Except for 'Big Data'' (2015) 135 *Privacy Laws & Business International Report* 12, 15.

¹²²⁴ Graham Greenleaf, 'Japan: Toward International Standards – Except for 'Big Data'' (2015) 135 *Privacy Laws & Business International Report* 12, 15

anonymisation could be so highly guaranteed. Indeed, as it has already been pointed out by certain authors, trained experts could identify individuals from the seemingly anonymous data by comparing it with other sets of data,¹²²⁵ thus calling into question the lofty and possibly even naïve ambitions of the Abe administration.

5. Conclusions

The reforms to Japanese data protection law promise an effective fresh push to current privacy rules, and could be regarded as a 'second generation' data protection law that takes into account considerations that did not yet exist in 2003, tackling teething problems that have arisen in its first 10 years of operation. By making it clear that the Japanese government wishes to assist businesses and bolster those companies that are prominent in e-commerce in Japan by rendering it straightforward to transfer and acquire large chunks of Big Data, it might fall into the tricky position of trading off consumer protections and the privacy of the individual data subjects at the expense of larger businesses, echoing the traditional Japanese mentality of the community above the individual. The new rules on anonymised personal information have been widely criticised as an 'ill-considered approach' and many have called upon the Japanese government to seek better ways to improve the socially valuable utilisation of personal data.¹²²⁶ It is the view of the author of this paper however that the stance taken towards achieving the full potential of vast valuable data held by many companies is a welcome perspective that differs from the prevailing status quo in Europe, where heavy administrative burdens imposed by EU law, and which will become even more stringent with the coming into force of the new Data Protection Regulation, create high compliance costs and discourage digital innovation and competitiveness, rather than encouraging it. The real effectiveness of the new Japanese laws and the end result of the tricky trade-off between individual privacy and economic growth will depend a great deal on whether the new rules, standards and levels of enforcement of the PIPC will match up to international expectations, and the answer to whether the operations of these rules will be truly beneficial for all stakeholders, and potentially influence similar laws elsewhere in the world, remains yet to be seen.

¹²²⁵ 'Privacy rights and 'Big Data' (*The Japan Times*, 31 July 2014) <<http://www.japantimes.co.jp/opinion/2014/07/31/editorials/privacy-rights-big-data/#.Vo42jH1mp7u>> accessed 30 July 2016.

¹²²⁶ Greenleaf, 'Japan's Proposed Changes: Weaken Privacy to Foster 'Big Data' (2014) 130 *Privacy Laws and Business International Report*, 23-25, 25.