



Privacy, Policy and Public Opinion in Japan **Background Report in Draft Form**

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Table of Contents

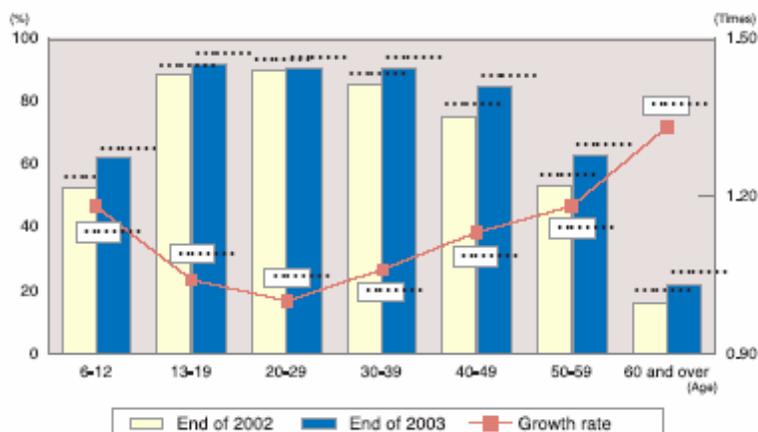
Internet Usage.....3
Policy and Laws.....4
Culture and Values.....6
Current Atmosphere.....8
References.....10

Privacy, Policy and Public Opinion in Japan – Draft Paper

Internet Usage

- The number of internet users in Japan was estimated to be 77.30 million in 2003, which is an increase of 7.88 million from 2002.
- The penetration rate is 60.6%.
- In 2003, the 13-19, 20-29 and 30-39 years old groups each had 90% usage rates or higher. However, middle-aged (40-59yrs.) users are increasing.

Internet Usage Rates by Age Group



Source: Communications Usage Trend Survey, MPHPT

Source: Ministry of Public Management, Home Affairs, Posts & Telecommunications. (2004). *Information and Communications in Japan*. Available online: www.johotsusintokei.soumu.go.jp

- Accessing the internet via mobile device is very popular- there were 63.8 million subscribers in 2003.
- Approximately 10 million citizens were broadband subscribers in 2003.
- OECD (2003) lists broadband access per 100 inhabitants in Japan is 8.6%.

- According to the World Economic Forum and the International Monetary Fund, Japan ranked 20th in the global competence index of IT usage, 2nd for mobile internet, and 65th for broadband.

Source: Young, B. (2004). "Diffusion and Usage Patterns of the Internet in Korea and Japan: A Comparison of Policy and Cultural Factors." *Development and Society* **33**(2): 229-250

Policy and Laws

Traditionally, the Japanese government and public have been fairly unconcerned with the issue of privacy and personal data protection. Early laws and policies were borne out of international pressure more so than public demand or a sincere commitment to privacy protection. This has begun to change however over the last couple of decades.

After the Second World War, Japanese law came to reflect American law and that of other Western countries. The 1946 Constitution contains sections that protect a citizen's privacy including the right to be, "secure in their homes, papers and effects against entries, searches and seizures..." unless a warrant is issued based on adequate grounds.¹ During the 1970's and 1980's, legislation based on the Organization for Economic Co-operation and Development (OECD) Privacy Guidelines was put in place. The Japanese government promoted a self-regulatory model when implementing the early legislation and expected the private sector to develop voluntary measures based on these guidelines.

Critics argue that previous and current legislation has done little to protect the privacy and data security of the Japanese. In 1998, Japan passed the Act for Protection of Computer Processed Personal Data held by Administrative Organs.

¹ Laurant, (2003).

While it called for the limitation of data collection and use by government institutions, it was plagued by problems. It allowed the government to choose the desired balance between individual and organizational interests, did not include strict limits on the collection of personal data, allowed poor security measures and used vague language.²

It seems that privacy protection measures are created only to be eroded by opposing policy. For example, wiretapping is prohibited in Japan under the Telecommunications Business Law and the Wire Telecommunications Law. However, the Communications Interception Law passed in 1999 effectively reversed these protections. The new law permits wiretapping of phones and faxes, and the monitoring of email as part of a criminal investigation.

Koga explains that Japan is under a, “state-sponsored monopoly over public information.”³ The purpose of the Information Disclosure Law, passed in 1999, is to provide citizens with access to their administrative information held by the government. According to Koga, the law has not fulfilled its purpose. In its original draft, the term “right to know” was included. After criticism from opposition parties and other members of government, “right to know” was omitted from the final version. Further, the National Property Law (1948) and the Copyright Law of Japan (1970) severely limit access to government information. Under these laws, government works are copyrighted, considered national property and are strictly managed by the central government.⁴

² Srinivasan, (1992), pp. 130.

³ Koga (2003), pp. 57.

⁴ Koga, (2003), pp. 57.

The Japanese government passed the Resident Basic Register Act in August, 1999. The act called for the creation of a computer network between all governments that would share the data contained in the resident register. The system gives every individual an eleven-digit identification number and contains six personal data items for each person: ID number, name, address, date of birth, gender and the data change history. Critics argued that this system would allow for easy surveillance of residents and many believed that the government was not being honest about the registry's intended use.

By August 2003, the personal data items of each individual contained in the registry had increased from six to fourteen even though most people were unaware of this increase.⁵ Government services accessing the data has also increased from ninety-three to two-hundred and sixty-four. Some local governments decided not to connect to the network after intense public criticism. Others decided to create a system that allowed them to disconnect from the network incase security breaches were detected.

In 1999, the government introduced the Personal Data Protection Bill. Ogasawara explains that it was partly in response to the rising public concern that followed after the creation of the Resident Registry Network System.⁶ It consisted of five basic principles and was to provide guidelines for government and commercial usage of personal information. The bill did not receive a warm reception. Opponents argued that the vague and abstract language of the five principles could infringe on freedom of speech rights and enable the government

⁵ Ogasawara, (2004), pp. 1.

⁶ *ibid.*, pp. 1.

to censor certain information.⁷ The bill was withdrawn in 2002 due to criticism by the media and the public. After some revision, the bill (The Personal Data Protection Act) was passed in 2003. Starting in 2003, the Act applied to government agencies only. As of April 1, 2005, the Act extends to both the government and private sectors.

Even in its revised version, the Personal Data Protection Act has been described as ineffective. Newspaper articles printed on April 1st, the day the Act fully came into effect, focused on the loopholes of the document. One article explained that there is no stipulation to penalize the theft of information itself. Instead, those caught are usually charged with the theft of the CD or diskette they load the information onto because information itself is not treated as an object. If the person brings their own CD or disk, they cannot be charged criminally.⁸

Another weakness of the Act pertains to the selling of names and information. The law prohibits the disclosure of personal information of others to third parties without their consent. But if the company in question explains the purpose for taking the information (perhaps on their website), it does not have to obtain the consent of each individual. Moreover, there is no law to punish those who sell name lists. Individuals must also prove that name-list brokers illegally obtained their information or used their information for purposes other than what was stated.⁹

⁷ Laurant, (2003).

⁸ "Anti-data Leak Law in Effect." The Yomiuri Shimbun, April 1, 2005, Japan

⁹ "Name-list Brokers Unfazed by New Law." The Yomiuri Shimbun, April 1, 2005. Japan.

Culture and Values

Hofstede's data from *Culture's Consequences* provides a valuable starting point in the analysis of Japanese culture and values. It should be noted however that the data used in his research is now more than twenty years old and may not accurately reflect Japan's current culture. Furthermore, the data obtained focused on the workplace and not society at large. That being said, Hofstede's four cultural dimensions can be easily extended from the organizational setting to society in general.

Japan is ranked fourth highest out of thirty-nine countries on Hofstede's Uncertainty Avoidance Index (UAI). High UAI countries have high anxiety levels, more emotional resistance to change and are less risk-taking. They prefer clear and thorough requirements and laws, and believe ordinary citizens are incompetent versus the authorities.¹⁰

Japanese trust in government is evident in their compliance with government requests and rules. Traditionally, the Japanese have been extremely cooperative with the government's collection of personal information (age, date of birth, sex, marital status, address, health insurance & pension information) on every citizen. Furthermore, Taylor et al. indicate that, "Japanese subjects were significantly more likely to agree that the government should exercise more control over both direct mail and telemarketing."¹¹ Only recently have residents begun to protest the national registers and question the surveillance practices of their government.

¹⁰ Hofstede, (1980), pp. 176.

¹¹ Taylor et al., (2000), pp. 233.

Based on Hofstede's UAI dimension, one could expect to find a stronger preference for regulation and policy in Japan. Cockfield indicates that Japan's most recent piece of legislation, the Personal Information Protection Act (PIPA), provides "a middle-road between the U.S. sectoral approach and the broader approach employed in Canada and the European Union."¹² PIPA is considered to be highly or moderately equivalent to privacy regulation found in other countries.

PIPA does not require businesses to designate an individual to be responsible for managing the firm's privacy policy nor does it call for a federally appointed privacy official or independent regulatory agency. Interestingly, Laurant found that the majority (83%) of survey respondents want organizations and individuals who obtain personal information to be regulated.¹³ In 2004, Westin found that 80% of respondents want a privacy officer assigned within government agencies.¹⁴

Unfortunately, predicting the level of acceptance of privacy regulation in Japan is not completely straightforward. This is because the UAI and Individualism (IDV) dimensions represent conflicting desires. The Japanese must balance their desire to avoid uncertainty and regulate their world with the collectivist need to maintain harmony. Srinivasan cites this desire for harmony as the reason why the Japanese generally dislike the law. Their society has traditionally been, "non-litigious and non-lawyer oriented."¹⁵ This may have been

¹² Cockfield, (2004), pp. 22.

¹³ Laurant, (2003).

¹⁴ Westin, (2004), pp. 77.

¹⁵ Srinivasan, (1992), pp. 122.

the case in the past but the Japanese are clearly concerned about personal information security and current public opinion reflects this. Westin found that 94% of respondents agreed that privacy policy is both important and necessary.¹⁶

Hofstede's Individualism Index (IDV) may provide the most insight into the relationship between Japanese values and privacy. Due to its low individualism score, Hofstede classified Japan as a collectivist culture. These cultures consist of an in-group/out-group dichotomy and have differing value systems based on these distinctions. Co-workers, friends, family members and neighbours are all examples of in-groups. Privacy is much more of a concern when dealing with members of the out-group, making consumers in a collectivist society much more sensitive to privacy invasions.¹⁷

One caveat to this is the priority given to the greater good. Collectivist cultures may be *more* tolerant of invasions of privacy if it is deemed to be for the greater good. As mentioned, one of the most fundamental concepts of Japanese culture is the maintenance of harmony.¹⁸ Members of this culture will sacrifice their individual rights for the betterment of society. The Japanese recognize privacy as a, "privilege enjoyed by the family in the home, not as a guaranteed right to the individual in society."¹⁹

Japan has been called a "society of surveillance", where the surveillance of each other is tolerated and even encouraged.²⁰ To support this claim, Holden (1994) cites interviews with Japanese exchange students who describe the

¹⁶ Westin, (2004), pp. 6.

¹⁷ Taylor et al., (2000), pp. 231.

¹⁸ Srinivasan, (1992), pp. 122.

¹⁹ *ibid*, pp. 121.

²⁰ Holden, (1994), pp. 193.

pressure of being under constant watch. He also refers to the overwhelming popularity of voyeurism in the Japanese video market.

According to Hofstede, collectivist cultures are more likely to have unbalanced political power systems, less press freedom and greater potential for repression. Japan seems to be no exception. It is not hard to imagine the negative impact these characteristics can have on privacy protection. This can explain why the protection of individual rights has seen little support in Japan compared to other cultures.²¹ Barr refers to the “bureaucracy-led government” to explain the lack of protection.²² He explains that the Japanese government has traditionally operated with the belief that the personal information data of its citizens is government property and therefore, they can collect and use the data how they see fit.

A third dimension, the Masculinity Index (MAS) also sheds light on the relationship between Japanese culture and privacy. High MAS countries place more importance on earnings, recognition, advancement and challenge. They also believe that organizational interests are a legitimate reason for interfering with people’s lives.²³ In Hofstede’s study, Japan ranked first on the MAS index. Based on this, we can predict that respondents from Japan may be more willing to accept surveillance measures in the workplace and more willing to compromise their environment to make financial gains.

²¹ Barr, (1997).

²² *ibid.*

²³ Hofstede, (1980), 288.

Current Atmosphere

A review of current research seems to indicate that a shift in attitudes toward privacy is occurring in Japan. Two authors offer reasons for this. Srinivasan explains that the Japanese are no longer as co-operative with data collection as they once were because new threats have developed.²⁴ He posits that the introduction of computers and electronic databases and the increase in direct-mail companies have led to rising concerns over privacy. As their data is used in new and increasing ways, the Japanese have responded with greater concern.

Ogasawara cites the introduction of the Resident Registry Network System as the catalyst in the Japanese debate on privacy and surveillance. Prior to the RRNS, there had been few surveys or opinion polls specifically concerning privacy issues.²⁵ When the privacy question was finally posed, feelings of concern and apprehension began to surface. A survey conducted in 2002 found that 86% of the respondents were concerned about the misuse or leakage of their personal information and 76% said the launch of the database (RRNS) should be postponed.²⁶ Even local governing agencies were skeptical of the benefits of the RRNS: only 19% of respondents to a survey conducted by the Japan Lawyer's Association in 2001 felt that the registry provided more merit than demerit.²⁷ A survey conducted by Westin indicated that the top two concerns of Japanese respondents were the exposure of personal data to

²⁴ Srinivasan, (1992), pp.124.

²⁵ Ogasawara, (2004), pp. 3.

²⁶ Brooke, J. (2002/08/06). Japanese Protest Online Registry as Attack on Privacy Lack of Law on Misuse of Data Upsets Citizens. The New York Times.

²⁷ Ogasawara, (2004), pp. 3.

outside access (95.1%) and the computerizing of personal data by government ministries and municipal governments (88.7%).²⁸

Abe attributes the turning of opinions to a number of scandals involving the government and members of the media.²⁹ He explains that the Japanese have always possessed a great distrust for the media and this has allowed the Japanese government to proceed unchecked. When several scandals involving the abuse of personal information by the government came to light, the situation began to change. Slowly, Abe argues, the public has begun to align itself with the media and has become more critical of the government.

The Japanese face the same dilemma that has appeared in many other countries: the need to balance personal privacy with security. Both the high UAI scores and the priority given to the greater good can help explain the acceptance of privacy invasions. However, Abe cautions that this has been a “reluctant acceptance”.³⁰ In a 2003 survey, both individuals and businesses cited “protection of personal information” as the most important concern when using the internet.³¹ It is clear that the acceptance of privacy invasions should not be conflated with an absence of concern regarding privacy issues.

²⁸ Westin, (2004), pp.81.

²⁹ Abe, (2004), pp. 217

³⁰ *ibid.*

³¹ Economic Research Office, (2004), pp. 31.

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