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Japan: Trends & Developments

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Trends and Developments

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Initiatives for Developing Web3 and Metaverse

Background

The Japanese government is currently looking to “web3” and “start-ups” as engines of growth of the Japanese economy and it promoted various relevant government policies in 2022.

Among these, the key trends in 2022 were the intensive discussions at the government and private levels regarding the promotion of web3 and the blockchain-based ecosystem in Japan, including non-fungible tokens (NFT) and decentralised autonomous organisations (DAO), as well as the metaverse, which is also evolving rapidly and has a close relationship with web3 (albeit web3 and metaverse are different concepts).

Web3 (including NFTs and DAOs)

In March 2022, the Project Team regarding NFT Policies within the Headquarters for the Promotion of a Digital Society of the Liberal Democratic Party, the ruling party in Japan, announced the “NFT White Paper: Japan’s NFT Strategy for the Web3.0 Era” (NFT White Paper). The NFT White Paper illustrates the challenges and proposals regarding the following six topics:

- establishment and advancement of a national strategy for the Web3.0 era;
- measures necessary for NFT business development;
- measures necessary to protect the rights of content IP holders;
- measures necessary for user protection;

- measures necessary to foster a healthy blockchain ecosystem; and
- measures necessary to protect social and legal interests.

In response to the NFT White Paper and governmental policies, the Web3.0 Study Group was established under the Digital Agency. That group conducted hearings and held discussions regarding establishing the environment for the promotion of web3, and a report was published by the group in December 2022. The report presents basic guidelines for the healthy development of web3 and introduces discussions on:

- digital assets;
- DAO;
- Decentralised Identity (DID);
- relationship with the metaverse; and
- user protection and legal enforcement.

The report is a useful tool to understand the future course of efforts in Japan to promote web3.

In addition to discussions at the government level, private-level discussions are also moving forward. Industry associations related to cryptocurrency/NFT businesses in Japan are discussing issues and working on designing rules through the development of self-regulatory guidelines. For example, the Japan Cryptoasset Business Association, an industry association related to crypto-assets, published in March 2022 an update to the Guidelines for NFT Businesses. The update added explanations regarding cop-

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wright and amended explanations regarding designing NFT gaming services from the perspective of whether these services constitute gambling. In September 2022, the Council for Sports Ecosystem Promotion, an industry association for sports, published the NFT Guideline (guideline on NFT package sales using sports content and establishment of secondary markets). The NFT Guideline explains the possibility that NFT package sales together with the establishment of secondary markets may not fall under gambling under Japanese law and can be legally developed while considering consumer protection, and the legal framework for returning a part of the sales from the secondary market to a content holder who minted an NFT. Although these are non-binding soft law, they should be referred to when considering conducting NFT package sales.

Metaverse

The metaverse is also expected to have considerable potential for new markets where Japanese IP can be utilised and monetised. The metaverse is a field that deserves attention and it has begun to be utilised for various industries such as shopping, tourism, and education, in addition to gaming and entertainment. In 2022, several initiatives were implemented at both the government and private levels.

In July 2022, the Ministry of Economy, Trade and Industry (METI) launched the “Research Project on Constructing Web-3.0-Era Creator Economies”. This research project will:

- investigate and review the legal issues in question;
- investigate overseas cases; and
- hold study group discussions regarding web3 and the metaverse, primarily from the creator’s perspective.

In order to review each issue, METI will establish the Metaverse Trial Space. In August 2022, the Ministry of Internal Affairs and Communications (MIC) also established the “Study Group on the Utilization of Metaverse Towards Web3 Era”. This study group will look into:

- matters relating to increasing convenience for users in the use of the metaverse;
- matters relating to the clarification of issues with the use of the metaverse, categorised by use cases;
- the impact of the development of use of the metaverse on digital infrastructure, socioeconomic activities, users; and
- other matters with respect to the use of the metaverse in the forthcoming era.

In November 2022, the “Public-Private Cooperative Council for New Legal Issues Concerning Contents in the Metaverse” was established in the Intellectual Property Strategy Headquarters of the Japanese government. Its activities include:

- understanding and discussing new legal issues;
- examining the establishment of rules through public-private co-operation (including soft law); and
- responding to international rule-making trends.

Close attention should be paid to the issues identified and rules implemented by the Council.

At the private sector level, as in the case of web3, efforts to improve the environment by establishing self-regulatory guidelines by industry associations have been developed. In April 2022, the VIRTUALCITY CONSORTIUM formed mainly by companies operating “Virtual Shibuya”, a

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metaverse based on a real city, published the “Virtual City Guideline ver1.0”, which provided guidelines for examining issues in developing and operating the metaverse (ver1.5 was published in November 2022). The Guideline refers to the protection of legal rights related to digital objects in the metaverse, as well as various applicable regulations, including data protection/privacy issues. In November 2022, the Japan Digital Space Economy Federation, an industry association regarding the metaverse, published the “Report on the Economic Development of Digital Space”. From the perspective of the three themes (intellectual property, digital finance, and platforms), the report provides:

- an overview of issues;
- explanation of issues;
- direction of discussions; and
- future policies.

The report discusses broadly, for example, the protection of avatars, crypto-assets and NFTs, personal information, security, labour law, gambling and antitrust laws.

Increased Scrutiny on Online Advertising and Social Media

The year 2022 also saw the enhancement of regulations in the fields of online advertising and social media.

Affiliate advertising

On 29 June 2022, the Consumer Affairs Agency revised its guidelines on measures for managing the display of advertisements under the Act against Unjustifiable Premiums and Misleading Representations (the “Premiums and Representations Act”), and the guidelines stipulated the necessary measures for businesses to implement affiliate advertisements (affiliate marketing) through affiliate programmes. In the past, there

was discussion about whether advertisers would be responsible for the representations made by affiliate advertisers in affiliate programmes. However, the revised guidelines clarified that, to the extent that advertisers are involved in the determination of the content of the representation (including cases where the determination is delegated to the affiliate advertiser), the advertisers, not affiliate advertisers, should be viewed as having made the representation themselves. Thus, the advertisers should be responsible for the representations made by affiliate advertisers and must take measures to prevent misleading representations in affiliate advertisements.

Stealth marketing

Currently, Japanese law does not regulate the advertising method of stealth marketing (the act of displaying an advertisement while concealing the fact that it is an advertisement) per se. However, a report published in December 2022 by the research group on stealth marketing established by the Consumer Affairs Agency proposed that the method of stealth marketing itself be generally and comprehensively prohibited, and it is highly likely that such regulations will be introduced in the near future.

Regulation of large digital advertising platforms

The Act on Improving Transparency and Fairness of Digital Platforms (Transparency Act), which came into effect on 1 February 2021, regulates individual platform providers designated by the Minister of METI among digital platforms that meet the requirements for business classification and business scale specified by the relevant cabinet order. In addition to online shopping malls and app stores, digital advertisements were also made subject to the Transparency Act on 1 August 2022. Under the amended cabinet order, integrated media adver-

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tising digital platforms (including search engines, social media, video sharing services) (domestic sales of which are at least JPY100 billion) and advertising intermediary digital platforms (including digital platforms that are intermediaries between publishers with advertising space and advertisers) (domestic sales of which are at least JPY50 billion) were included as regulated platforms. Among advertising platforms that meet the above requirements, those designated by the Minister of METI (currently, Google LLC, Meta Platforms, Inc. and Yahoo Japan Corporation) will be subject to the regulations, including obligations regarding disclosure of information and establishment of relevant systems for various issues in the digital advertising field (eg, issues related to the quality of digital advertising such as ad fraud and the lack of transparency regarding prices and transaction details).

Amendment of Telecommunications Business Act

The amended Telecommunications Business Act, which was enacted on 13 June 2022 and will go into effect on 16 June 2023, included the following amendments.

Under the current law, there is no registration or filing requirement for the provision of internet search services and social media services. Under the amended Act, large-scale internet search service and/or social media service providers that are designated by the Minister of MIC must make a telecommunications business filing and comply with certain regulations under the Act.

Also, the Minister of MIC may designate telecommunications carriers among those providing telecommunications services that have a significant impact on users' benefit. If so designated, such telecommunication carriers should

properly handle specified user information ((i) information that constitutes the secrecy of communications and (ii) information that can identify users), prepare and file its information handling regulations, and prepare and publish its information handling policy.

Further, when certain telecommunications carriers stipulated in the ordinance of the MIC send information about users (such as third-party cookies, tags, and advertising IDs) externally, they must give prior notification to the users of the content of the user information that is to be sent externally and the destination of such information, or place such information in a location so that the users can become aware of the above.

Measures against illegal and harmful information circulating on platforms

Under current law, illegal and harmful information, including defamatory and false information, is regulated under certain general laws such as the Civil Code and the Penal Code. In recent years, however, there has been an increase in the spread of defamatory and false information on social media. In August 2022, MIC issued a research group report discussing measures to address this issue. In this report, it was recommended that a certain level of government involvement should be promptly implemented in measures against illegal and harmful information, such as establishing and requiring compliance with a code of conduct to ensure transparency and accountability of efforts by platform operators and the introduction of a legal framework.

Mobility

Background

In the field of mobility, the government is working with private entities to promote the development of technology, transport infrastructure, and

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relevant systems. In 2014, the “Public-Private ITS Initiative/Roadmap” was formulated. This is a government-wide strategy for road transport systems using ICT (known as intelligent transport systems – ITS), and automated driving, formulated with the purpose of developing and implementing a strategy through public-private partnership. The Initiative/Roadmap has since been revised each year, and in August 2022 it was succeeded by the policy, “Future of Transportation in Society Utilizing Digital Technology 2022”. In this policy, the scope was extended to the whole mobility field, including not only ITS and automated driving, but also driving assistance, use of road-space, Mobility as a Service (MaaS), drones, and Advanced Air Mobilities (AAM).

Automated driving and MaaS

In recent years, laws and guidelines have been frequently revised in the area of mobility. Regarding automated driving, the Road Traffic Act was amended in April 2022 (scheduled to come into effect in April 2023) and a permit system for Level 4 automated driving was established. The establishment of this permit system enables a high level of automated driving. While in Level 3, people drive in an emergency, in Level 4, automated driving is implemented without human intervention, and the system also safely stops the vehicle in an emergency. Under the “Future of Transportation in Society Utilizing Digital Technology 2022”, the stated goal is to achieve the commercialisation of Level 4 automated driving on expressways and the utilisation of Level 4 automated driving in the provision of logistics services and transportation services to citizens, around 2025. It is expected that legislation will continue to be developed toward these goals.

Rules for new mobility services are also being developed. Based on the recent increasing pop-

ularity of electric kickboards and the development of automated delivery robots for practical use, the amendment of the Road Traffic Act in 2022 stipulates rules for electric kickboards and automated delivery robots.

Drones and AAM

In 2022, important legislative amendments were also made to unmanned aircrafts (UAs) such as drones. First, the amendment to the Civil Aeronautics Act in 2020, which came into effect in June 2022, provides a registration system for UAs. Furthermore, another amendment to the Civil Aeronautics Act in 2021 made it possible (from December 2022) to fly UAs in inhabited districts, such as residential areas, even when the UA is not visible to the operator. This is categorised as Level 4 flight, which allows flight outside the operator’s sight in uninhabited districts. The 2021 amendment:

- established a certification system for UAs;
- established a licensing system for operators to enable this Level 4 flight; and
- reorganised regulations on prohibited air-spaces and operational limitations.

Level 4 drones are expected to be used in a wide range of applications, including the delivery of goods, disaster relief support, and inspection of infrastructure facilities.

Further, discussions regarding aircraft with people on board such as AAM are also being carried out. For example, the discussions involve electric vertical take-off and land aircrafts (eVTOLs), which are electrically powered and are capable of automated operation and vertical takeoff and landing. The goal is to launch commercial services by AAM at the 2025 Osaka Expo. Test flights are being conducted in various locations for this purpose. In March 2022, guidelines for

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application of the Civil Aeronautics Act for AAM tests were formulated (revised in December 2022). The guidelines clarified permit standards for test flights and published procedures and recommendations for obtaining permits. AAM is expected to be used for services such as logistics, passenger transport and emergency transport in the future.

Legal Tech and Contract Review by AI

Legal tech is gaining popularity as a tool to digitise legal work and make it more efficient. A typical example is services that use AI technology to review contracts and identify any missing provisions. As many as several thousand companies use these kinds of services.

However, in June and October 2022, two companies planning AI contract review services separately made inquiries about the legality of their legal-tech services. In response, the Ministry of Justice (MOJ) expressed the view for each of the above inquiries that the services planned to be provided by the companies may be illegal. Specifically, MOJ stated that the services may violate Article 72 of the Attorneys Act, which prohibits persons other than attorneys from engaging in legal services for the purpose of earning compensation.

The responses from the MOJ only cover the specific inquiries that were made and do not imply that AI contract review services in general or existing services are illegal. However, there were growing concerns that companies may hesitate to introduce such services, which may impede the growth of the market for AI contract review services.

To address these concerns, in December 2022, the Council for Promotion of Regulatory Reform in the Cabinet Office decided that the MOJ would consider formulating guidelines that introduce specific cases in which AI contract review services are considered legal. Most of the existing services are expected to be treated as legal.

After the responses from the MOJ to the inquiries, the private sector launched a self-regulatory organisation in September 2022 made up of companies providing AI contract review services. This organisation is also working to create voluntary rules to ensure the legality of the services.

JAPAN TRENDS AND DEVELOPMENTS

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legal professionals and represents Japanese major telecom carriers, key TV networks, and many domestic and international internet, social media and gaming companies, not only in transactions but also in disputes, regulatory matters and general corporate matters. Its TMT practice group is well positioned to consistently meet requests from clients to provide advice on business strategies, daily compliance and corporate matters.

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