

The Influence of the Social Security and Tax Number System on Privacy in Japan

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I. Outline of the Social Security and Tax Number System¹⁾

The government is planning to introduce the Social Security and Tax Number System (“the number system”) in 2016. This will influence a lot on privacy in Japan. I will explain this number system first.

1. Purposes

The government explains that it will adopt the number system in order to (1) enhance the social security to people who truly need it, (2) achieve the fairness of burdens such as the payment for income tax, and (3) develop the efficiency in administration.

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1) See materials in English available at <<http://www.cas.go.jp/jp/seisaku/bangoseido/english.html>>

2. The Mechanisms of the Number System

The number system has following three mechanisms.

2.1 Number assignment

The government will assign new numbers associated with up-to-date data on four types of basic information (name, address, sex and date of birth). The function of the numbers is to grasp information regarding incomes and so on and use efficiently that information for social security and taxation.

Numbers in the number system have the following five characteristics.

- (i) Each and every person is assigned one Number
- (ii) Each person has a unique Number
- (iii) Numbers can be used in the private and public sectors

(For example, if Company A pays wages to Individual B, in order for the national and local governments to obtain a grasp of Individual B's wages, Company A must send a payment record including Individual B's number to the governments. So, Individual B must present his or her number to Company A. In that sense, the number is used from Individual B (private sector) to Company A (private sector) to the national and local governments (public sector))

- (iv) Numbers shall be confirmed visually (It is necessary for Company A to confirm the number presented by Individual B)

- (v) Numbers shall be associated with four types of up-to-date information

2.2 Information Sharing

Multiple institutions will share information relating to an individual by associating number system numbers and other numbers (We already have many other number systems such as the pension number system) with him or her.

In information sharing, when an institution with a database requires specific information from a database held by another institution, it uses some form of identifier (This is not number system number. Identifier is made from the number system number and the Juki Net residency registry system number) to specify the individual in question and then obtains new information. Institutions must use an information sharing infrastructure in order to clarify the type of personal information being shared and the reason for sharing it.

2.3 Identification

The government will distribute IC cards to the public. The surface of the cards will display the four types of basic information and a facial photograph. The IC cards also have IC chips to record numbers. The IC cards could be used for in-person identification and online authentication.

3. Extent of procedures including notification and use of the numbers

The following is the extent of procedures in various fields in which the public will provide and use the numbers.

3.1 Pensions

Procedures related to notifications, benefit payments, and premiums for those eligible for National Pension Plan and Employees' Pension Insurance, defined benefits pension plans, defined contribution pension plans, mutual aid pensions, government pensions, etc.

3.2 Labor insurance

Procedures related to notifications for those eligible for employment insurance, receipt of unemployment benefits, job-seeking at public employment offices, and workers compensation benefits

3.3 Welfare

Procedures related to applications for payment of childrearing allowance, special child allowance, special benefits for people with disabilities, etc.

Procedures related to applications and notifications for livelihood assistance Procedures related to applications for welfare fund loans for single mother families and widows and for living welfare fund loans

3.4 Care insurance

Procedures related to notifications, benefit payments, and premiums for those eligible for care insurance

3.5 Healthcare

Procedures related to notifications and premiums for those covered by health insurance (including short-term benefits under the National Public Officers Mutual Aid Association Act and the Local Public Officers Mutual Aid Association Act) or the National Health Insurance Act

Procedures related to applications for healthcare benefits under the Maternal and Child Health Act and the Child Welfare Act and applications for self-reliance support under the Services and Supports for Persons with Disabilities Act.

3.6 Taxes

Entry on documents directed by national tax laws to be submitted to a Tax Office Director, and related uses.

Entry on documents directed by local tax laws and related ordinances to be submitted to a local government, and related uses.

3.7 Other

Procedures related to social security and local taxes as designated by prefectural ordinances.

Ⅱ. Overview of the Circumstances of Privacy Protection in Japan

1. Overview of the Act on the Protection of Personal Information²⁾

The purpose of the Act on the Protection of Personal Information is stipulated as follows in Article 1:

The purpose of this Act is to protect the rights and interests of individuals while taking consideration of the usefulness of personal information, in view of a remarkable increase in the use of personal information due to development of the advanced information and communications society, by clarifying the responsibilities of the State and local public bodies, etc. with laying down basic philosophy, establishment of a basic policy by the Government and the matters to serve as a basis for other measures on the protection of personal information, and by prescribing the duties to be observed by entities handling personal information, etc., regarding the proper handling of personal information.

As noted in Article 1, the opening section of the Act on the Protection of Personal Information calls for the State and local public entities to formulate and implement measures to protect personal information, but specific provisions for administrative organs are provided in other laws. The Act on the Protection of Personal Information Held by Administrative Organs provides for the State, the Act on the Protection of Personal Information Retained by Independent Administrative Agencies and Others

2) See materials in English available at <http://www.caa.go.jp/seikatsu/kojin/index_en.html>

provides for independent administrative entities, and ordinances to protect personal information provide for local governments.

The following sections of the Act on the Protection of Personal Information lay down the general duties that must be observed by the private sector. The main duties of the private sector are stipulated to be (1) Restriction by the Purpose of Use, (2) Proper Acquisition, (3) Security Control Measures, (4) Restriction of Provision to Third Parties, (5) Disclosure, Correction, Stopping the Use. These duties were decided based on the aforementioned eight principles of the OECD. More detailed regulations exist for finance, health care, and other individual fields in the private sector through guidelines determined by the relevant ministries and agencies. These duties do not apply to small-scale entities or for personal use, or to media reports, research, religious activities, and political activities.

In order to ensure that the private sector observes these obligations, each industry draws up its own guidelines for protection of personal information, and an authorized organization for the protection of personal information handles any complaints concerning the handling of personal information made against an entity handling personal information, separately from the entity. And if the entity does not uphold its obligations, the competent minister holding jurisdiction over the entity can take measures for improvement of the situation, such as ordering that it correct or stop the violations. If the entity does not comply with the order for correction or cessation, it will be sentenced to imprisonment of not more than six months or to a fine of not more than 300,000 yen.

2. Technological advancements and delay in response

Although the Act on the Protection of Personal Information has been enacted since 2005, the issue of privacy has still not been sufficiently resolved. In society today, technological advancements have made it possible to easily grasp, store, and analyze an individual's history of behavior.

For instance, web page view history and search history on the Internet is collected and analyzed. Behavioral data is grasped by attaching cookies to the browsers of website visitors, which allows revisits to the site by the same cookie to be recognized as visits by the same individual. This is not regulated by Japan's Act on the Protection of Personal Information.

Because this Act regulates the entities those have "personal information". In this Act, "personal information" means information about a living individual which can identify the specific individual by name, date of birth or other description contained in such information (including such information as will allow easy reference to other information and will thereby enable the identification of the specific individual).

The term in parentheses shows that the information A which cannot identify the specific individual itself fall into "personal information" when the entity who obtain the information A can easily identify the specific individual by combining it with other information. For example, a telephone number itself is not usually "personal information". Because, in Japan, it is not easy to know whose number it is from the number itself. But, if you have a database to search telephone numbers and easily know whose number it is, the telephone number could be personal information for you.³⁾

3) Uga Katsuya, *Kojinjoyohogohou no chikujokaisetsu* [Commentary on Personal Information Protection Laws](the fourth edition) p.28.

Come back to cookies, since the operator only has a history of visits by cookies, and not information that can identify the visitors, such as names, the operator is not regulated by Japan's Act on the Protection of Personal Information.

But with the accumulation of information such as browsing history, it would become easier to identify whose information this is; and even if identification is not possible now, it is likely that technological progress will make this possible in the future.

These issues raise new questions. Should we leave it unregulated when a person could be identified on the Internet without being identified in the real world? We have to make new rules for the identification on the internet. The United States is more advanced than Japan in online behavioral advertising, a form of advertising that collects and analyzes web behavior to send advertisements tailored to the tastes of an individual. In response to this, the industry is imposing self-regulations and there are also studies underway on regulatory bills. Meanwhile, in Japan, the government has just begun to argue plans for regulations.

III. The influence of the number system on privacy in Japan

1. The privacy problems of identification

Amid such advancements in gathering information on an individual's history of behavior, the government is now stepping up its work to introduce the number system as I mentioned earlier.

In Japan, the Juki Net residency registry system was launched in 2003

as a national ID system, but due to concerns over privacy, it was prohibited for the private sector to ask for this number. In addition, there are hardly any cases requiring the presentation of this number to receive public services. Because of such circumstances, there is hardly anyone who knows his or her own number. Meanwhile, however, the numbers in the number system are used for tax collection purposes, it would have to be presented to the other party in the event of monetary transactions, making it clear that this will come to be used in the private sector. If this number is broadly used in the private sector, it could serve as the key to collecting personal information, and, as in the United States, lead to the development of an industry dealing in personal information.

Daniel Solove, a professor of law at the George Washington University Law School in the U.S, wrote that identification itself has privacy problems because it connects people to data, identification attaches informational baggage to people. This alters what others learn about people as they engage in various transactions and activities.

There are concerns that our society will become one in which a single piece of information can provide the means to retrieving large amounts of information about an individual.

2. Society heading toward a Panopticon

It could be said that living in a society where new technological advancements can put your personal information on display to others, notably the government and big companies, would be like being imprisoned in a Panopticon prison building. A Panopticon prison is designed so that the prisoners in their cells are unable to tell if the observers in the observation

tower are watching them or not. Imagine how it would be to have your personal information known to a person in control but you are not able to see that person. If this situation continues, you would begin feeling that you're being monitored at all times even when that person is not actually observing you, and this would discourage you from acting differently from other people. This kind of chilling effect leads to a loss of autonomy. It is an issue that cannot be overlooked as it shakes the foundation of democratic society, which is built on the premise of a collective body of autonomous individuals.

The German Federal Constitutional court expounded the importance of privacy as the foundation of a democratic society in its 1983 population census decision. It concluded that a person who cannot foresee with sufficient certainty how much of his or her information is known to certain segments of society, and who is not able to assess to a certain degree the knowledge of his/her communication partners, may be essentially limited in his/her liberty to plan and make decisions. A society in which the citizens can not learn who came to know what about them, and when and at what opportunity this took place, would stand against the right to informational self-determination, and this also follows for the legal order that made this possible. It goes on to say that individuals who are concerned that behavior differing from others can always be recorded, accumulated forever as information, used, and communicated, would avoid attracting attention to themselves by taking that kind of action. For example, people who know that there is the possibility of danger in participating in a meeting or civil movement, which will be recorded by the authorities, would probably not exercise their basic rights such as the freedom to meet and the freedom of expression. This sentiment not only damages the development of each

individual personality, but also the public interest; the reason being that self-determination, which forms the basis for citizens to act on their own decision and supports their capability to cooperate with others, is the basic condition necessary for a free and democratic community to function.⁴⁾

Moreover, the Act on the Protection of Personal Information has brought Japanese society closer to a Panopticon. In a Panopticon, the flow of information between prisoners in their individual cells is obstructed. In much the same way, the Act of Protection of Personal Information has been inhibiting the flow of personal information in the private sector in a general and comprehensive manner. The provisions of Japan's personal information act are, in principle, directed toward controlling the flow of all personal information. Based on this, all possessors of personal information—mostly government and large companies—can easily refuse to provide information on the basis of protection of personal information. And those who want information—mostly the general public, media, and researchers—are not be able to obtain useful personal information even on rational grounds unless they act aggressively and devote an enormous amount of time and effort. There is an increasingly uneven distribution of personal information.

Solidarity between people is being hampered because name lists cannot be created. There have also been an increasing number of cases where the names of public officials involved in scandals are not revealed under the pretext of personal information. Speaking from my own experience, I had once requested an insurance company to provide me with a document that was prepared by a doctor upon their request concerning the injury of a client of mine, but they refused to give this to me on the grounds that

4) Tsuyoshi Hiramatsu, *Kojinjiyoho hogo— riron to un'yo* [Protection of Personal Information: Theory and Application] p.26.

it contained personal information on the doctor.

In this way, through advancement of technology, the number system and the Act on the Protection of Personal Information, a trend can be seen in Japan for certain powers to have the bulk of personal information, making it appear that Japan is heading toward becoming a Panopticon.

IV. The path we should take

I now wish to propose some schemes that we should take to avoid becoming a Panopticon.

1. Redefining the value of privacy

I believe that the time has come for us to think once again about the value of privacy. Developments in technology change how privacy should be protected. For example, Article 35 of the Japanese Constitution, which provides for protection of all persons in their home against entries, searches and seizures, can also be considered as aiming to protect the privacy of the residence, but if there are technologies that can eavesdrop on conversations or see inside the house from outside, limits will be reached in protection under Article 35. Much of our privacy has been protected merely by existing physical elements, such as the exterior walls of a house. In a society where the advancement of technology has made the walls of a house no longer able to live up to their role of protecting privacy, aggressive measures to protect privacy become necessary to replace the walls. In considering what form this should take, it would be necessary

to pursue the meaning of privacy protection, namely, discern what kind of values privacy has been attempting to protect.

I believe that the value of privacy lies in protecting the autonomy of people. Thus it would be necessary to analyze privacy issues and, notably for those cases that make autonomous decision-making difficult, take aggressive measures to rectify the situation.

2. Privacy by Design⁵⁾

Many people feel that technological advancements will result in loss of privacy. It is true that technology is making astounding strides, and legislation is unable to keep pace with individual technologies. It would, however, be possible to also use this technology to protect privacy.

An example would be using the aforementioned cookies. Cookies can be used to refuse the use of cookies that track user behavior on the Internet. For surveillance cameras as well, there are technologies that can store the footage as blurred images when there is nothing out of the ordinary and restore this to sharp images when the need arises. There's also a method in which the camera begins to record images only when abnormal actions are detected such as a person suddenly running.

In this way, in the debate on protection of privacy hereon, it would be important to have technologies that are less privacy-invasive deliberately developed and adopted from the design stage. Special efforts to maintain privacy should not have to come from the side of the public; they need to be made by the developers of systems that could infringe on privacy.

This kind of thinking was broadened in scope by the concept of Privacy

5) Ann Cavoukian, *Privacy by Design Curriculum 2.0*.

by Design. Privacy by Design proposes the design of technologies or systems that consider privacy. Privacy considerations include minimum use of personal information, maximum implementation of security, and strengthening the individual's power to control his or her information. In order to protect privacy within an environment undergoing significant technological advancements, it is believed necessary to also determine a comprehensive doctrine of this kind, and within each individual case, weigh the interests of the necessity of personal information against the protection of privacy, rather than having separate, specific conduct controls.

Google, Facebook, and other Internet services with large numbers of users were introduced to Japan from North America. Due to the efforts of non-governmental organizations for privacy protection and the Federal Trade Commission (FTC) of the United States, as well as the Privacy Commissioner of Canada, these services reflect to some extent the concept of Privacy by Design, and constant improvements are also being made. It is actually because of this situation that there has been little opportunity in Japan for people to take the initiative in thinking about protection of privacy on the Internet. (They tend to take protection of privacy for granted, with little interest in the methods taken to protect privacy.) However, I believe that in the near future, value will be placed on products and services excelling in privacy protection—just like environmental protection is today.

3. Establishment of a third party entity for privacy protection

One of the reasons that can be given for why Japan is lagging behind in privacy protection is that there has been no organization to comprehensively handle Japan's privacy issues.

Studies were conducted on the establishment of a privacy commissioner when the Act on the Protection of Personal Information was enacted, but due to the silo bureaucracy of the ministries and agencies, it was decided that the respective ministers would be responsible for overseeing the protection of personal information in the private sector. A system for oversight by a minister, who is not an expert in privacy issues, is not effective.

Proactive efforts should be taken to build a social infrastructure that will minimize the risk of infringement of privacy. A third party entity should, after establishing the basic concepts for privacy protection in digital society, monitor how administrative organs are implementing concrete policies based on these concepts (e.g. privacy impact assessment). It would also have the function of giving guidance, advice, counsel, and orders concerning the situation of privacy protection, and promoting the spread of this basic concept among the private sector and the implementation of specific policies in line with this concept.

This third party entity needs to be established not just on the national level but on the local level as well. These third party entities should, in addition, play the role of bodies providing simple and fast solutions for privacy disputes with the government and private sector, and serve to promote awareness among the public on the true circumstances of personal information circulation and use, as well as the methods taken to protect privacy.

V. Brief Summary

I explained the influence of the social security and tax number system on privacy in Japan.

Although the Act on the Protection of Personal Information has been enacted, the issue of privacy has still not been sufficiently resolved. Technological advancements have made it possible to easily grasp, store, and analyze an individual's history of behavior. Amid such situation, the government is now stepping up its work to introduce the number system. There are concerns that our society will become one in which a single piece of information can provide the means to retrieving large amounts of information about an individual. It could be said that living in a society where new technological advancements can put your personal information on display to others, notably the government and big companies, would be like being imprisoned in a Panopticon prison building.

If this situation continues, you would begin feeling that you're being monitored at all times even when that person is not actually observing you, and this would discourage you from acting differently from other people. This kind of chilling effect leads to a loss of autonomy. It is an issue that cannot be overlooked as it shakes the foundation of democratic society, which is built on the premise of a collective body of autonomous individuals.

Therefore I would like to propose some schemes that we should take to avoid becoming a Panopticon. First, I believe that the value of privacy lies in protecting the autonomy of people. Thus it would be necessary to analyze privacy issues and, notably for those cases that make autonomous decision-making difficult, take aggressive measures to rectify the situation. Second, in the debate on protection of privacy, it would be important to have technologies that are less privacy-invasive deliberately developed and adopted from the design stage. Special efforts to maintain privacy need to be made by the developers of systems that could infringe on privacy. Third, proactive efforts should be taken to build a social infrastructure that

will minimize the risk of infringement of privacy. A third party entity should, after establishing the basic concepts for privacy protection in digital society, monitor how administrative organs are implementing concrete policies based on these concepts. It would also have the function of giving guidance, advice, counsel, and orders concerning the situation of privacy protection, and promoting the spread of this basic concept among the private sector and the implementation of specific policies in line with this concept.

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[국문초록]

일본에서의 사회보장 · 조세번호제도가
프라이버시 보호에 미치는 영향

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일본 정부는 2016년 사회보장 · 조세 번호제도 (‘번호 제도’) 도입을 계획하고 있다. 이는 일본의 프라이버시 문제에 많은 영향을 미치게 될 것이다.

일본 정부는 새로운 번호를 부여하게 될 것이다. 이 번호의 기능은 수입 등에 관한 정보를 파악해 이 번호를 사회 보장 및 세무에 효율적으로 이용하기 위한 것이다. 복수의 기관들이 관련 번호 시스템 번호를 통해 각 개인에 관한 정보를 공유하게 될 것이며, 그 개인에 관한 다른 번호들도 공유하게 될 것이다. 정부는 일반인들에게 IC 카드를 배포할 것이다. 이 IC 카드는 개인의 식별 및 온라인 인증 용도로 사용될 것이다.

비록 개인정보보호법이 2005년 이후부터 시행되고 있지만, 프라이버시 문제는 아직 충분히 해결되지 못하고 있다. 오늘날의 사회에서 기술 진보는 개인의 행동 기록을 쉽게 파악, 저장 분석하는 일을 가능하게 하였다. 이런 상황에서 일본 정부는 이제 번호제도를 도입하기 위한 작업에 착수하였다. 우리 사회가 하나의 단일 정보로도 개인에 관한 많은 양의 정보를 인출할 수 있는 사회가 될 것이라는 우려도 있다.

새로운 기술 진보를 통해 우리 자신의 개인 정보가 다른 사람에게 공개되고, 특히 정부 및 대기업에 공개되는 사회는 판옵티콘(Panopticon) 감옥 건물과도 같은 사회가 될 수 있을 지도 모른다. 이러한 상황이

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계속된다면, 우리는 실제로 관찰 당하지 않아도 늘 감시를 받는 것과 같이 느낄 수 있을 것이며, 이는 다른 사람과 다르게 행동하는 것을 억제할 수도 있다. 이러한 위협 효과는 자율성의 상실로 이어지게 된다. 이 문제는 자율성을 지닌 개인들의 집단으로 이루어진 민주사회의 근간을 흔들 수 있는 문제이기 때문에 간과할 수 없는 문제라 할 수 있다.

따라서 본 저자는 판옵티콘이 되는 일을 피하기 위해 우리가 취해야 하는 몇 가지 제도를 제안하고자 한다.

첫째, 본 저자는 프라이버시의 가치는 사람들의 자율성을 보호하는 것에 있다고 믿는다. 따라서 프라이버시 이슈, 특히 자율적인 의사결정을 어렵게 하고 상황을 시정하기 위해 공격적 조치들이 필요한 사례에 있어서의 프라이버시 문제를 분석해볼 필요가 있을 것이다.

둘째, 프라이버시 보호에 관한 논쟁에서 설계 단계부터 프라이버시 침해가 적은 기술을 의도적으로 개발하고 채택하는 것이 중요할 것이다. 프라이버시를 보호하기 위한 특별한 노력을 대중이 기울일 필요가 없어야 한다. 그러한 노력은 프라이버시를 침해할 수도 있는 시스템 개발자가 기울여야 하는 노력들이다.

셋째, 선제적 조치를 취해 프라이버시 침해 위험성을 최소화할 수 있는 사회 기반구조를 갖추어야 한다. 제3자는 디지털 사회에서의 프라이버시 보호라는 기본적 개념을 수립한 이후 행정 기관들이 그러한 개념에 기초해 구체적 방침들을 실행하는 과정을 감시해야 한다. 또한 프라이버시 보호 상황에 관한 지침, 자문, 충고, 명령 등을 제시할 수 있는 기능을 갖추고, 민간 분야에서 그러한 기본 개념을 홍보하고 그러한 개념에 부합되게 구체적 정책을 시행할 수 있게 해야 할 것이다.

주제어 : 개인정보보호, 개인정보보호법, 개인정보보호작용, 조세번호제도, 일본의법률

