

Author:

[E-mail✉ Noriya Ishikawa](#)

[E-mail✉ Akiko Takiguchi](#)

The Amended Telecommunications Business Act (the “TBA”) will become effective on June 16, 2023. In particular, so-called “external transmission rules” have been established to address the use of user information stored in their terminals through cookies and related technology. Previously, in Japan, restrictions on cookies had been partially introduced under the Act on the Protection of Personal Information (“APPI”); however, this is the first time that cookies and related technology have been directly regulated.

Under the TBA, when certain telecommunications business operators (“Operators”) intend to process any data in a manner that will involve an external transfer of any user information stored in their terminals, such as smartphones, tablets, or PCs, the Operators are obligated to provide certain information to the relevant users or obtain consent to the transfer from the relevant users¹.

More specifically, Article 27-12 of the TBA, and Article 22-2-27 of the Amended Telecommunications Business Act Enforcement Regulations state:

- (1) when Operators, that provide any of the following services (among others) through a web browser or an application:
 - A) services that intermediate messages between users (e.g., email services, direct message services, and web meeting systems that enable to limit the participants);
 - B) online storage services that allow users to enter information and unspecified users to review the information, social networking services, electronic bulletin board services, video sharing services, online shopping mall, sharing services, matching services, live streaming services, online games;
 - C) online search services; or
 - D) online services that provide various information to public (e.g., news, weather, and maps)
- (2) intend to process any data in a manner that will involve an external transfer of any user information stored in their terminals (e.g., identification information generated using cookie technologies or behavior histories, obtained in connection with telecommunications services) (“User Terminal Information”) during the provision of their telecommunications services,

¹ “Operators” herein means the person or entity operating a telecommunications business (i.e., the business involved in providing telecommunications services to meet the demands of other persons/entities) including those that are not subject to the mandatory registration or filing of a notification under the TBA.

- (3) the relevant Operators must take one of the following measures, unless the relevant information is the information that users need to send when using the relevant telecommunications services (e.g., information regarding the operating system, screen settings, and language settings):
- A) notify the user or make information regarding the transmission of user information to the third parties (the User Terminal Information subject to transmission, the name of the person or the entity to which the User Terminal Information will be sent, and the purposes of use of the User Terminal Information, for each tag or information collection module for both the sender and the receiver of such information) readily accessible to all users;
 - B) obtain the user's consent; or
 - C) take opt-out measures.

As you can see in (2) above, identification information generated using cookie technologies falls within "any user information" under the TBA, compared to the APPI, under which most of such information does not constitute "personal information" or "personal data".

If the Operators subject to the external transmission rules under the TBA fail to comply with the rules, they may be subject to (i) reporting of their business to the Minister for Internal Affairs and Communications, or inspection of their telecommunications facilities and other items, (ii) an order for improvement of the means of conducting their operations or other improvement measures, and (iii) publication of the name or other particulars of the person who has committed the act in violation of the external transmission rules or the order. If the Operators do not report or make a false report, or refuse, hinder or evade the inspection in the above (i), such Operators may be subject to a fine not more than three hundred thousand (300,000) yen, and if the Operators violate the above (ii) (an improvement order), they may be subject to a fine not more than two (2) million yen.

The guidelines and their commentary, which are currently being reviewed by the Ministry of Internal Affairs and Communications and are expected to be finalized soon, and response to public consultation, which ended on April 26, 2023, will provide more detailed guidance on the external transmission rules. It is advisable that all business operators with business in Japan (including those entities located outside Japan) through a website or app assess whether they would be subject to the external transmission rules under the TBA, and if so, analyze what kind of information they collect from users and transfer to a third party, as well as the purposes of such transfers, for each tag or information collection module. We will update once the guidelines and their commentary are finalized.

In order to respond to the business needs of our clients, we publish newsletters on a variety of timely topics. Back numbers can be found [here](#). If you would like to subscribe to the N&A Newsletter, please fill out [the N&A Newsletter subscription form](#).

This newsletter is the product of its authors and does not reflect the views or opinion of Nishimura & Asahi. In addition, this newsletter is not intended to create an attorney-client relationship or to be legal advice and should not be considered to be a substitute for legal advice. Individual legal and factual circumstances should be taken into consideration in consultation with professional counsel prior to taking any action related to the subject matter of this newsletter.

Public Relations Section, Nishimura & Asahi [E-mail](#) 