

Navigating Artificial Intelligence rules in the Asia Pacific region

Yan Luo and **Xuezi Dan** of Covington give an overview of the current regulatory landscape on AI across Asia Pacific, including China and South Korea.

With the rapid evolution of artificial intelligence (AI) technology, the regulatory frameworks for AI in the Asia-Pacific (APAC) region continue to develop quickly. Policymakers and regulators have been prompted to consider either reviewing existing regulatory frameworks to ensure their effectiveness in addressing emerging risks brought by AI, or proposing new, AI-specific rules or regulations. As a result, AI-related guidelines and initiatives have been issued in many APAC jurisdictions to offer non-binding best practices for organizations seeking to develop or adopt such technologies. At the same time, a few APAC jurisdictions have adopted or are considering adopting specific, prescriptive laws and regulations to govern AI.

Overall, there appears to be a trend across the region to promote AI uses and developments, with most jurisdictions focusing on high-level and principle-based guidance. While a few jurisdictions are considering regulations specific to AI, they are still at an early stage. Further, privacy regulators and some industry regulators, such as financial regulators, are starting to play a role in AI governance.

This article provides a summary of the various approaches taken by several APAC jurisdictions in regulating AI and managing AI-related risks. First, we will discuss the jurisdictions that have adopted or proposed AI-specific regulations, namely the People's Republic of China (hereinafter referred to as China), South Korea, and Taiwan. We will then offer a high-level overview of other jurisdictions that are currently adopting a voluntary approach to AI governance through non-binding guidelines and policies or relying on existing laws and regulations.

AI-SPECIFIC LAWS AND REGULATIONS

Several jurisdictions in the region are moving toward AI-specific regulations,

including China, South Korea, and Taiwan.

China has been most active in shaping regulations specific to generative AI technologies since 2023. It has taken a multifaceted approach that combines AI-specific regulations, national standards and technical guidance to govern generative AI services and the regulatory focus has been on services that are provided to the public in China. The Interim Administrative Measures for Generative Artificial Intelligence Services¹ (GenAI Measures) represent a milestone as the first comprehensive regulation specifically addressing generative AI services, which came into effect on 15 August 2023. Amongst the requirements stipulated in this regulation, providers offering certain generative AI services must undergo a government-led security assessment and are subject to regulatory filing requirements. Several non-binding technical documents and national standards have been issued or are being drafted to further implement this regulation.

Prior to the regulation that specifically addresses generative AI services, China had issued regulations for deep synthesis² and algorithmic recommendations³. Further, China promulgated rules⁴ on conducting an ethical review of scientific activities involving generative AI.

Other jurisdictions that take a similar approach include South Korea and Taiwan. South Korea does not have effective AI-specific legislation yet, but the draft Act on Fostering the AI Industry and Securing Trustworthy AI is currently pending before the National Assembly.⁵ Once enacted, it will serve as the first framework legislation that comprehensively governs the usage of AI in South Korea. Similarly, Taiwan is drafting a basic law governing AI, i.e. the Basic Law for Development of Artificial Intelligence,⁶ which will set out fundamental principles for AI

development and for the government to promote the development of AI technologies. However, it is still uncertain with respect to whether and when Taiwan will pass this draft law.

NON-BINDING AI PRINCIPLES AND GUIDELINES

Other jurisdictions in the APAC region take a voluntary approach for the moment, relying on non-binding principles and guidelines as well as existing laws to address AI-related issues. Such jurisdictions include Australia, Japan, Singapore, India, Hong Kong, Thailand and Vietnam.

For instance, Australia has so far taken a soft-law approach. Australia's AI Ethics Principles⁷ were published in 2019, setting out principles for certain aspects in relation to AI governance, including fairness, privacy protection and security, reliability and safety, transparency and explainability, and accountability.⁸ Similarly, Japan has no comprehensive AI-specific regulation but only provides non-binding guidance. Singapore, India, Hong Kong, Thailand and Vietnam also have their AI-related guidelines.

In addition to non-binding guidelines, some regulators also provide practical tools for AI services. For instance, Singapore launched an AI governance testing framework and toolkit in May 2022 and the initiative of a generative AI evaluation sandbox in October 2023, providing a common baseline of evaluation testing methods and benchmarks to assess generative AI products.

In these jurisdictions that have not yet issued any regulations specific to AI, enforcement in relation to AI could be carried out under existing laws. For instance, in order to understand the implications of the development and use of AI on data privacy in Hong Kong, the privacy regulator of Hong Kong – the Office of the Privacy Commissioner for Personal Data (PCPD) –

carried out compliance checks on 28 organizations from August 2023 to February 2024 to understand their practices in relation to the collection, use and processing of personal data in the development or use of AI, as well as their AI governance structure.⁹

Some jurisdictions have started to experiment with the best approach to regulate AI services, even though they do not have any AI regulations in place yet. For instance, India's regulator – the Ministry of Electronics and Information Technology – issued a non-binding advisory on 1 March 2024, asking that all AI tools (including AI models, software using generative AI or any algorithms)

that are currently being tested, in development or are potentially unreliable, to seek approval from the government before being released to the public.¹⁰ However, in a later advisory issued on 15 March 2024, the Ministry of Electronics and Information Technology withdrew the requirement mandating government approval of AI tools.¹¹

LOOKING FORWARD

The fast development of AI technologies certainly poses new regulatory challenges for APAC governments. With China being the first jurisdiction that adopted AI-specific regulations, there will still be uncertainties

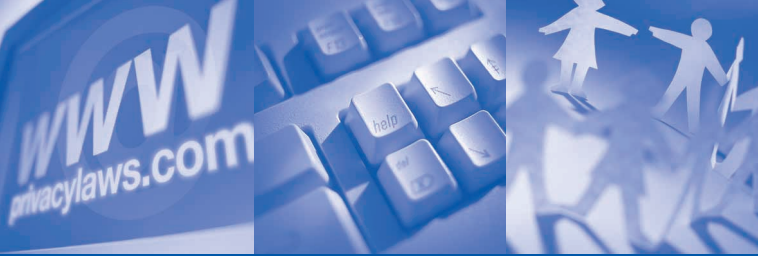
going forward regarding how other regulators in the APAC region would address the risks brought by AI. It will be sensible for companies that develop or deploy AI technologies in the APAC region to closely monitor these developments and be prepared.

AUTHORS

Yan Luo is a Partner at Covington's Palo Alto office in California, US, and Xuezi Dan is an Associate in the firm's Beijing office in China.
Emails: yluo@cov.com
xdan@cov.com

REFERENCES

- 1 See: www.cac.gov.cn/2023-07/13/c_1690898327029107.htm.
- 2 See: www.cac.gov.cn/2022-12/11/c_1672221949354811.htm.
- 3 See: www.cac.gov.cn/2022-01/04/c_1642894606364259.htm
- 4 See: www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/gfxwj/gfxwj2023/202310/t20231008_188309.html.
- 5 See: www.assembly.go.kr/portal/bbs/B0000051/view.do?nttId=2095056&menuNo=600101&sdate=&edate=&pageUnit=10&pageIndex=1.
- 6 See: ppg.ly.gov.tw/ppg/download/agenda1/02/pdf/09/07/14/LCEWA01_090714_00037.pdf.
- 7 See: www.industry.gov.au/publications/australias-artificial-intelligence-ethics-framework/australias-ai-ethics-principles.
- 8 Even though there is no AI-specific legislation in Australia yet, it is believed that the government might have an intention to develop an AI-specific legislation.
- 9 See: www.pcpd.org.hk/english/news_events/media_statements/press_20240221.html.
- 10 See media reports, e.g. timesofindia.indiatimes.com/gadgets-news/government-to-tech-companies-take-permission-before-launching-ai-models-in-india/articleshow/108167769.cms.
- 11 See media reports, e.g. economictimes.indiatimes.com/tech/technology/govt-withdraws-advisory-on-regulation-of-ai-platforms/articleshow/108531687.cms



PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

CJEU rules on SCHUFA's automated decision-making

A broad interpretation of 'automated decision-making' means that a range of automated processes may be caught for both credit scoring and other contexts, such as recruitment. By **Katharina A. Weimer** of Fieldfisher Germany.

In its long-awaited decision in proceedings between an individual and the Federal State of Hessen, Germany, (Hessen) (C-634/21)¹ the Court of Justice of the European Union (CJEU) has now

interpreted the "automated decision-making" framework under the GDPR. The CJEU ruled in its judgment on 12 January 2024 that a credit scoring

Continued on p.3

Israel's EU adequacy status renewed – a surprise and a relief

Professor Michael Birnhack of Tel Aviv University analyses the EU's recent positive adequacy decision on Israel.

The EU's decision to reaffirm Israel's adequacy status was received by the local privacy community with relief, and with some surprise. The relief is due to the importance of the decision for the local economy, and the negative economic and political implications that

would have occurred, had an adverse decision been reached. The moderate surprise is due to the persistent gaps between Israeli data protection law and the GDPR which are quite substantial.

Continued on p.5

Valuable Data, Priceless Privacy

1-3 July 2024, St. John's College, Cambridge

The tension between monetising data and the abstract value of privacy

78 speakers from 16 countries in 30 sessions over 3 days

www.privacylaws.com/plb2024

Issue 188

APRIL 2024

COMMENT

2 - Balancing privacy with AI

NEWS

11- Surveillance at the Paris Olympics

15 - Ontario's IPC gains power to impose penalties on health sector

26 - Pay or consent advertising model

ANALYSIS

1 - CJEU rules on SCHUFA

1 - Israel's EU adequacy status renewed

8 - Amazon France Logistique fined for excessive employee monitoring

13 - Navigating Artificial Intelligence rules in the Asia Pacific region

18 - Caribbean data privacy laws

LEGISLATION

28 - Türkiye's DP Act amended

MANAGEMENT

14 - Events Diary

30 - EU AI Act: Enforcement insights

NEWS IN BRIEF

4 - EU to adopt Health Data Space

7 - Netherlands fines Uber €10 million

7 - EU Commission to issue report on how the GDPR is working

10 - US restricts access to its citizens' sensitive personal data

10 - Florida's under 14s social media ban

14 - The UN General Assembly adopts global resolution on AI

17 - Court of Justice rules on IAB Europe's role in real time bidding

25 - EU Commission hosts safe data flows conference

29 - EU Parliament adopts AI Act

29 - EDPS asks for changes to CoE draft AI Convention

INTERNATIONAL
report

ISSUE NO 188

APRIL 2024

PUBLISHER**Stewart H Dresner**

stewart.dresner@privacylaws.com

EDITOR**Laura Linkomies**

laura.linkomies@privacylaws.com

DEPUTY EDITOR**Tom Cooper**

tom.cooper@privacylaws.com

ASIA-PACIFIC EDITOR**Graham Greenleaf**

g.greenleaf@iinet.net.au

REPORT SUBSCRIPTIONS**K'an Thomas**

kan@privacylaws.com

CONTRIBUTORS**Katharina A. Weimer**

Fieldfisher, Germany

Professor Michael Birnhack

Tel Aviv University, Israel

Nana Botchorichvili

IDEA Avocats, France

Poojan Bulani

University College London, UK

Yan Luo and Xuezi Dan

Covington, US and China

Merrill Dresner

PL&B Correspondent

Affiliated Associate Professor**Elizabeth Coombs**

University of Malta, Malta

Associate Professor Elif Küzeci

Bahçeşehir University, Türkiye

Lorraine Maisnier-Boché, Pilar Arzuaga and Simon Mortier

McDermott Will & Emery, France, UK and Belgium

Published by

Privacy Laws & Business, 2nd Floor,
Monument House, 215 Marsh Road, Pinner,
Middlesex HA5 5NE, United Kingdom**Tel: +44 (0)20 8868 9200****Email: info@privacylaws.com****Website: www.privacylaws.com****Subscriptions:** The *Privacy Laws & Business* International Report is produced six times a year and is available on an annual subscription basis only. Subscription details are at the back of this report.

Whilst every care is taken to provide accurate information, the publishers cannot accept liability for errors or omissions or for any advice given.

Design by ProCreative +44 (0)845 3003753

Printed by Rapidity Communications Ltd +44 (0)20 7689 8686

ISSN 2046-844X

Copyright: No part of this publication in whole or in part may be reproduced or transmitted in any form without the prior written permission of the publisher.

© 2024 Privacy Laws & Business

“ comment ”

Balancing privacy with data-crunching AI

The EU AI Act will soon be reality (p.29), and we watch with interest which regulators will be given the task to enforce the Act at national level. The EU AI Office will coordinate enforcement action across the EU on prohibited and high-risk AI systems (p.30). Will it function in a similar fashion to the European Data Protection Board (EDPB) in its efforts to ensure consistency in Member States? Its AI Board with Member States' representatives may conduct joint investigations, but will not have direct enforcement powers.

Meanwhile, the EU Commission is evaluating how the GDPR is working in practice. Results are expected by this summer (p.7). A topic that has gained much attention is legal bases for behavioural advertising and the so-called Pay or Consent model. The EU DPAs are soon to issue an opinion on this subject (p.26). Italy's Data Protection Authority, the *Garante*, is actively enforcing the GDPR in relation to OpenAI, the company behind ChatGPT's AI platform. Also, the EDPB has a taskforce on this issue. Both of these topics will be discussed in detail at our Annual Conference in July, with Meta, the EU Commission, the *Garante*, EDPB and OpenAI speaking – see www.privacylaws.com/plb2024

AI-aided surveillance will be in action at the Paris 2024 summer Olympic Games (p.11). Our second article from France looks at the CNIL's €32 million fine on Amazon Logistique for its employee data processing (p.8). In this issue, we also bring you AI developments from the Asia-Pacific region (p.13), our first in-depth analysis of 20 Caribbean privacy laws (p.18), stronger regulatory powers in Ontario, Canada (p.15) and new international transfer rules in Türkiye (p.28). Read on p.1 an analysis of Israel's renewed EU adequacy decision, and the implications of a CJEU ruling on automated decision-making by a credit scoring agency.

Laura Linkomies, Editor

PRIVACY LAWS & BUSINESS

Contribute to PL&B reports

Do you have a case study or opinion you wish us to publish? Contributions to this publication and books for review are always welcome. If you wish to offer reports or news items, please contact Laura Linkomies on Tel: +44 (0)20 8868 9200 or email laura.linkomies@privacylaws.com.

Join the Privacy Laws & Business community

The *PL&B International Report*, published six times a year, is the world's longest running international privacy laws publication. It provides comprehensive global news, on 180+ countries alongside legal analysis, management guidance and corporate case studies.

PL&B's International Report will help you to:

Stay informed of data protection legislative developments in 180+ countries.

Learn from others' experience through case studies and analysis.

Incorporate compliance solutions into your business strategy.

Find out about future regulatory plans.

Understand laws, regulations, court and administrative decisions and what they will mean to you.

Be alert to future privacy and data protection law issues that will affect your organisation's compliance and reputation.

Included in your subscription:

1. Six issues published annually

2. **Online search by keyword**
Search for the most relevant content from all *PL&B* publications.

3. **Electronic Version**
We will email you the PDF edition which you can also access in online format via the *PL&B* website.

4. **Paper version also available**
Postal charges apply outside the UK.

5. **News Updates**
Additional email updates keep you regularly informed of the latest developments.

6. **Back Issues**
Access all *PL&B International Report* back issues.

7. **Events Documentation**
Access events documentation such as *PL&B Annual International Conferences*, in July, Cambridge.

8. **Helpline Enquiry Service**
Contact the *PL&B* team with questions such as the current status of legislation, and sources for specific texts. This service does not offer legal advice or provide consultancy.

9. **Free place at a *PL&B* event**
A free place at a *PL&B* organised event when booked at least 10 days in advance. Excludes the Annual Conference. More than one free place with Multiple and Enterprise subscriptions.

[privacylaws.com/reports](https://www.privacylaws.com/reports)



The UK and International *PL&B* Reports have been my 'go to' resource for 20 years despite the wide choice of alternate resources now available. And have you tried the Annual Conference at Cambridge? I have seven IAPP certificates so a big IAPP supporter. But the *PL&B* Cambridge event, each July, still knocks the spots off IAPP and other conferences!



Derek A Wynne, SVP Privacy & Chief Privacy Officer, Paysafe Group

UK Report

Privacy Laws & Business also publishes *PL&B UK Report* six times a year, covering the Data Protection Act 2018, the current Data Protection and Digital Information Bill, the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Electronic Communications Regulations 2003.

Stay informed of legislative developments, learn from others' experience through case studies and analysis, and incorporate compliance solutions into your business.

Subscriptions

Subscription licences are available:

- Single use
- Multiple use
- Enterprise basis
- Introductory, two and three years discounted options

Full subscription information is at [privacylaws.com/subscribe](https://www.privacylaws.com/subscribe)

Satisfaction Guarantee

If you are dissatisfied with the *Report* in any way, the unexpired portion of your subscription will be repaid.