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 Services[1] (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 synthesis[2] and algorithmic recommendations[3]. Further, China promulgated rules[4] 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 Principles[7] 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

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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.
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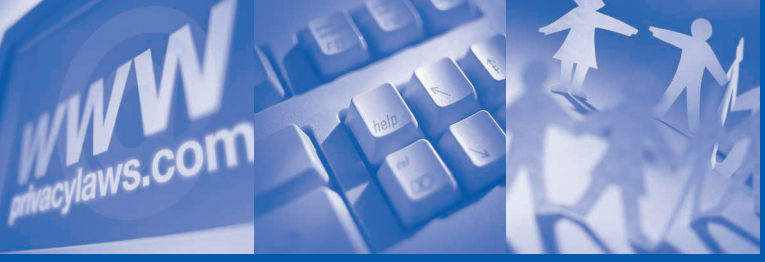

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PRIVACY LAWS & BUSINESS
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CJEU rules on SCHUFA's automated decision-making

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

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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.

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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

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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
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