

**Study Group 'AI governance and its Evaluation'**  
**Report on the Session #6**

**1. Introduction**

The Japan Deep Learning Association establishes study groups as a forum for deepening knowledge and discussing domestic and international policy trends related to artificial intelligence (hereafter AI) and Deep Learning (hereafter DL). This study group, "AI Governance and its Evaluation," defines "governance" as a system of management and evaluation by various actors, and launched a study group in July 2020 to investigate what forms of governance are possible and conduct a year-long study to help build trustworthy AI systems.

In the 6th session (held on December 9, 2020), Mr. Tetsuya Kanda, Legal System Planning Division, and Mr. Hidenori Ochiai, Consumer Safety Division, both from the Consumer Affairs Agency, gave a presentation on the topic of Whistleblowing and Consumer Protection for AI governance. Any opinions expressed in their presentations are their own perspectives.

This report is a reconstruction of the topical presentations and the discussions of the study group participants.

**2. Whistleblowing System**

Mr. Tetsuya Kanda gave a presentation titled "Whistleblowing System and Whistleblower Protection Act: Current Status and Future".

**Whistleblowing System in Corporate Management**

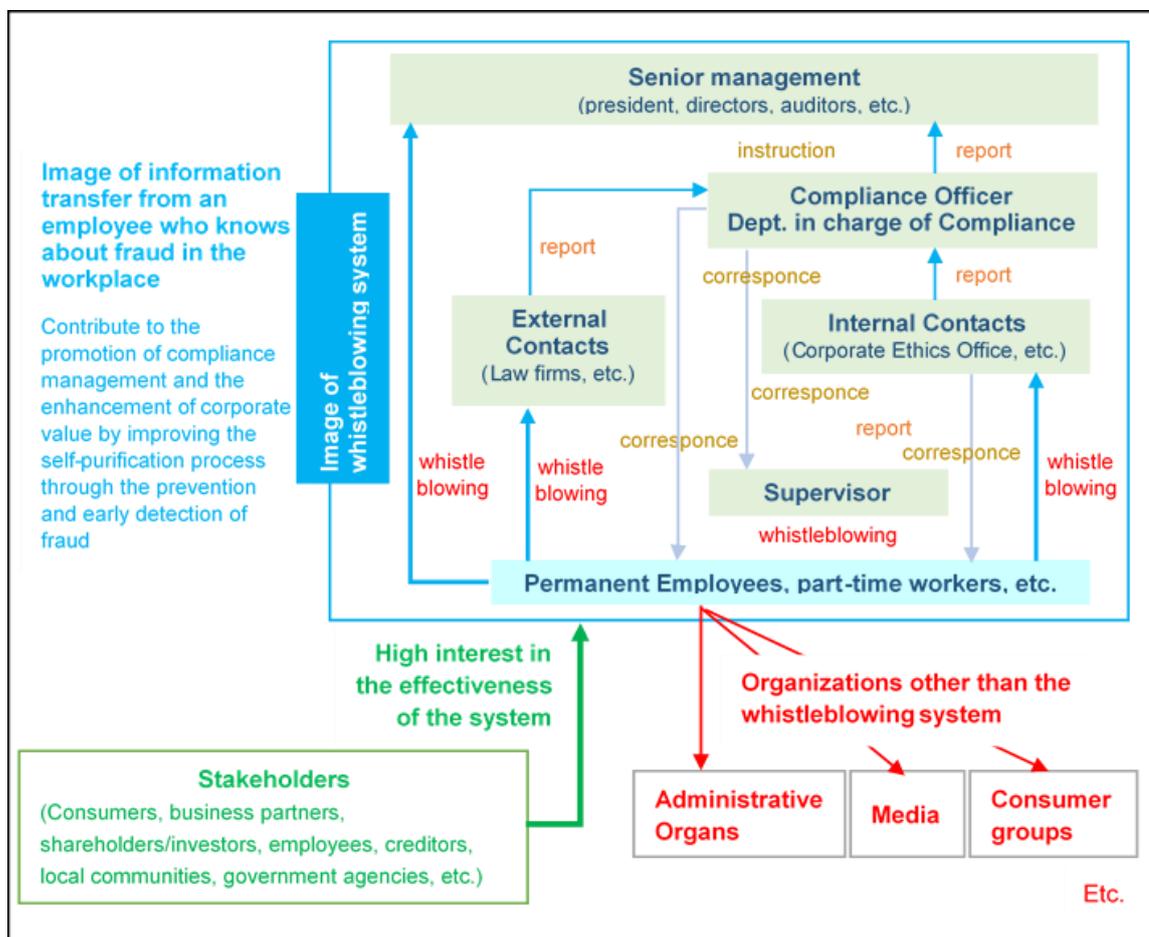
The whistleblowing system is a mechanism to obtain information on management risks as soon as possible from employees who are aware of problems within the company, to identify and correct problems before they occur and at an early stage, and to provide better product services, while thoroughly protecting the whistleblowers. The purpose of this system is to promote self-purification and compliance management, to provide safe and secure products and services, and to maintain and improve corporate value.

By introducing a whistleblowing system, companies can provide multiple whistleblowing channels for various patterns of internal corporate problems (see Table 1 and Figure 1).

**Table1: Patterns of whistleblowing<sup>1</sup>**

Case examples	Examples of possible reporting patterns
Fraud has been detected, but the supervisor may not be understanding and may be involved in the fraud.	Permanent employees, part-time workers, etc. ⇒ Internal contact ⇒ Senior management (president, directors, auditors, etc.)
Reporting to a supervisor or contact person within the company may cause disadvantages to the whistleblower.	Permanent Employees, part-time workers, etc. ⇒ External contacts <sup>2</sup> (law firms, etc.) Permanent Employees, part-time workers, etc. ⇒ External contacts (law firms, etc.)

**Figure1: Image of the whistleblowing system<sup>3</sup>**



<sup>1</sup> Prepared from Figure 1 and the presentation.

<sup>2</sup> In the case where a report is received by an external contact such as a law firm, the external contact will inform the department in charge of compliance within the company of the details of the report, but will not necessarily share the details of the informant (name, department, etc.).

<sup>3</sup> Excerpt from "The Need to Improve the Effectiveness of the Whistleblower System" by the Consumer Affairs Agency  
[https://www.caa.go.jp/policies/policy/consumer\\_system/whistleblower\\_protection\\_system/pr/pdf/pr\\_191018\\_0003.pdf](https://www.caa.go.jp/policies/policy/consumer_system/whistleblower_protection_system/pr/pdf/pr_191018_0003.pdf)

Although companies first of all want to grasp information related to internal corporate problems and management risks within the internal whistleblowing system, there are many irregularities that are difficult to be easily detected, and depending on the corporate structure, the irregularities are not always corrected. In some cases, employees are expected to report directly to external organizations (administrative organs, media, consumer groups, etc.) outside the whistleblowing system. In such a case, the company that has been informed of the fraud to the external organization may be subject to administrative punishment or may face reputational risk. Therefore, it is important for companies to enhance the trust in their whistleblowing system itself and to promote the use of the system.

### **Effectiveness of the whistleblowing system**

According to the survey on the actual situation of the whistleblowing system in companies<sup>4</sup>, about 60% of the fraud detection process is whistleblowing, which is about 1.5 times higher than the fraud detection by internal audit<sup>5</sup>. One of the reasons why the percentage of fraud detection by whistleblowing is the highest is that the fraud detection by the systematic route<sup>6</sup> is not functioning effectively, or that whistleblowing is done before the systematic route.

The results of the survey also revealed that many companies place high value and effectiveness on the introduction of whistleblowing system in terms of deterring violations and improving the self-purification process.

### **Background of the Enactment of the Whistleblower Protection Act**

In the early 2000s, scandals such as concealed recalls by automobile companies<sup>7</sup> and disguised production sites by food companies came to light one after another, triggered by internal reports to external organizations. Although the whistleblowing system had existed since that time, it became clear that it was not functioning properly.

Violations of laws and regulations by corporations, especially by large corporations (businesses that provide consumer goods), can lead to damage to the safety and security of consumers' lives. Therefore, in order to promote legal compliance by businesses and ensure the safety and security of the public, the government enacted

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<sup>4</sup> Consumer Affairs Agency, "FY 2016 Report on the Actual Status of the Whistleblowing System in the Private Sector," p. 58  
[https://warp.da.ndl.go.jp/info:ndljp/pid/10993152/www.caa.go.jp/planning/koueki/chosa-kenkyu/files/chosa\\_kenkyu\\_chosa\\_170104\\_0002.pdf](https://warp.da.ndl.go.jp/info:ndljp/pid/10993152/www.caa.go.jp/planning/koueki/chosa-kenkyu/files/chosa_kenkyu_chosa_170104_0002.pdf)

<sup>5</sup> In the report in footnote 4, internal audit is defined as an audit by an audit department within an organization.

<sup>6</sup> In the report in footnote 4, the systematic route is defined as the daily checking of work by supervisors, business task reports from employees, etc.

<sup>7</sup> Collecting and repairing defective parts without notifying the supervising authorities of the recall.

the “Whistleblower Protection Act”<sup>8</sup>, which stipulates the prohibition of dismissal, etc. for employees who report illegal activities within businesses, and measures to be taken by businesses in relation to whistleblowing.

### **Overview of the Whistleblower Protection Act**

If an employee in a weak position reports to the designated reporting contact that a reportable fact<sup>9</sup> has occurred or is about to occur with respect to a labor provider (workplace), without the purpose of gaining unfair profits or causing damage to others, the employee's report is considered to be whistleblowing. In the case of whistleblowing, dismissal or other matters disadvantageous to the whistleblower may be invalidated.

In addition to whistleblowing within the company (internal whistleblowing), the designated reporting contacts include administrative organs that have the authority to take disciplinary action, media, consumer groups, etc. (parties deemed necessary for the occurrence and prevention of damage). In addition, Requirements for the protection of whistleblowers are stipulated, and the requirements for protection become stricter in the order of internal whistleblowing, followed by whistleblowing to administrative organs and other external parties, and as a result, internal whistleblowing is encouraged. For example, the protection requirement for internal whistleblowing is that the whistleblower is protected at the time of reporting if the reportable fact occurs or is likely to occur. On the other hand, the protection requirement for whistleblowing to administrative organs is that the content of the whistleblower's report must be truthful and reasonable, which is an additional protection requirement.

However, since there has been no end to the number of scandals involving businesses in recent years, and whistleblowing systems have not been developed within companies, a revised law was enacted in June 2020 in order to prevent damage through early correction.

### **The Revised Whistleblower Protection Act and Future Developments**

A law to partially amend the Whistleblower Protection Act was promulgated on June 12, 2020 (see Table 2). The Consumer Affairs Agency is planning to prepare guidelines regarding the establishment of systems and other necessary measures for businesses to respond to whistleblowing and to deal with reports. The Agency is also holding a study group starting in October 2020 to discuss the contents of the guidelines.

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<sup>8</sup> Promulgated in June 2004, enforced in April 2006.

<sup>9</sup> The facts subject to reporting refer to violations of penal provisions stipulated in the Penal Code, Food Sanitation Law, Financial Instruments and Exchange Law, JAS Law, Air Pollution Control Law, Waste Disposal and Public Cleansing Law, Personal Information Protection Law, and other applicable laws specified by government ordinance (471 laws as of October 1, 2020). Each time a law is newly formulated or revised, it is designated by the government.

**Table2: Amendments to the Whistleblower Protection Act**

Purpose	Contents of revision
To make it easier for businesses to correct the injustice themselves and to report it with confidence	<ul style="list-style-type: none"> <li>✓ Require business operators to establish a system necessary to appropriately respond to whistleblowing (setting up a contact point, investigation, corrective measures, etc.) * Small and medium-sized businesses (less than 300 employees) are required to make efforts.</li> <li>✓ Introduction of administrative measures (advice and guidance, recommendations, and public announcement in case of non-compliance with recommendations) to ensure the effectiveness of these measures.</li> <li>✓ Mandate confidentiality of information that identifies the whistleblower to those engaged in internal investigations, etc. (Introduce criminal penalties for violation of this obligation)</li> </ul>
To facilitate external reporting to administrative organs, etc.	<ul style="list-style-type: none"> <li>✓ As a condition for reporting to an authorized administrative body, add reporting when submitting a document stating the name, etc.</li> <li>✓ Add the following as a condition for reporting to media, etc. <ul style="list-style-type: none"> <li>● Damage to property (difficult to recover or serious)</li> <li>● When there is a high possibility that information that could identify the whistleblower will be leaked.</li> </ul> </li> <li>✓ Establishment of systems necessary to respond to whistleblowing in authorized administrative organs, etc.</li> </ul>
To make it easier to protect whistleblowers	<ul style="list-style-type: none"> <li>✓ Add retired employees (within 1 year of retirement) and officers (in principle, prepositioning of investigation and correction efforts) to protected persons</li> <li>✓ Add administrative penalties to the scope of protected reporting.</li> <li>✓ Add exemption from liability for damage caused by reporting to the protection.</li> </ul>

**AI Issues from the Perspective of Internal Whistleblowing System and Whistleblower Protection Act**

Mr. Kanda pointed out the following three issues.

The first issue is about the facts to be reported. The Whistleblower Protection Act provides for reporting of violations of laws and regulations that are ultimately subject to criminal penalties. Since Japanese law assumes that violations subject to criminal

penalties are committed by humans, some of them may not apply when assuming algorithms. The question is whether the "intention" to commit an illegal act should be in the person who created the AI algorithm, or whether it should be identified in the AI algorithm. For example, if there is a cartel, it could be subject to criminal penalties under Japanese law. However, if AI algorithms communicate with each other to raise the amount of money, there may be a controversial pattern as to whether it is a criminal offense. There is also the question of whether ethical issues and illegal acts related to AI, even those not covered by the current law, should be covered in the future as part of the treatment of corporate whistleblowing.

The second issue is about the removal of materials that are managed on paper. Evidence is needed for disciplinary action by administrative organs and for control by investigative agencies. However, with the digitization of business, it is becoming more and more difficult to take out documents. Even if the materials are provided, the question arises as to whether it is possible for the administrative body to view the AI algorithm and observe that it is in violation, and even if there is no problem with the AI algorithm, if the violation is due to learning results, it will not be possible to make a decision by looking at the algorithm alone.

The third issue is about governance that does not rely on reporting. The whistleblowing system is one of the means of corporate governance. Since the Whistleblower Protection Act is designed to protect human beings from committing any kind of wrongdoing, it is necessary to discuss the governance of AI, including monitoring, rather than relying only on the whistleblowing system.

### **3. Mechanisms to ensure consumer safety in product accidents**

Next, Mr. Hidenori Ochiai gave a presentation on "Efforts to Ensure Consumer Safety".

#### **Liability relationship stipulated by the Product Liability Act**

Under Tort law of the Civil Code, it is necessary to prove the negligence of the other party when claiming loss or damage. However, proving negligence is difficult and not always easy. Therefore, the Product Liability Act was established to allow seeking compensation for damages when damage is caused by a defective product. The requirement to be proved is whether or not the life, body or property of another person has been infringed by the defect in the product delivered by the manufacturer, etc. The term "manufacturer, etc." refers to "a person who has manufactured, processed, or imported the product in the course of business, or a person who has labeled the product with a name, etc. that misleads the public into believing that the person is a manufacturer," etc. The term "product" refers to "manufactured or processed movable property" (excluding intangible property and real estate), and the term "defect" refers to

"a lack of safety that the product should normally have.

In the case of automated vehicles, the relevant ministries and auto industry players are debating how Product Liability Acts will be applied to automated vehicles. The key point is that inanimate objects are excluded as a requirement for the application of the Product Liability Act. If the automatic driving program is defective at the time of delivery to the purchaser of the car, it will fall under the category of "defect" under the Product Liability Act. However, it has been pointed out that if a defect is included in a program update, the requirements of the Product Liability Act may not apply unless the entire part containing the relevant program is replaced.

When the Product Liability Act was drafted, computer updates and defects in programs were discussed though, the scope was limited, like defects in manufactured products caused by stove fires, TV explosions, etc. However, since it is a rule to be judged by the courts, damages based on the Product Liability Act have been awarded in the following lawsuits.

- ✓ Normally, raw food is not considered to be subject to Product Liability Act, but in the Ishigakidai (spotted knifejaw fish) food poisoning case, the act of tampering with the fish by cooking it to the extent that it could be served to customers was deemed to be "processing" under the law, as it added new attributes or value to the raw material through human intervention. As a result, it lacked the safety that the food should normally have, and the damage was recognized as a defect in the product<sup>10</sup>.
- ✓ In the case of low-temperature burns on a cell phone and the case of the ignition of an outdoor unit of an air conditioner, as a result of comprehensive consideration of various circumstances, the cases were considered to be caused by the product, and the damage was recognized as defects in the products because of the lack of safety features that the products should normally have<sup>11</sup>.

Although the Product Liability Act is basically a law based on the premise of manufactured or processed movable property, it seems to be applied flexibly in light of the content of the cases, as shown in the precedents above<sup>12</sup>.

It is expected that the tort law of the Civil Code will be reviewed in the future, and there is a view that the Product Liability Act will remain as a special law among them. On the other hand, the current Product Liability Act has a small number of articles, which allows

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<sup>10</sup> Tokyo High Court Decision (January 26, 2005)

<sup>11</sup> Sendai High Court Decision (April 22, 2010)

<sup>12</sup> Case examples of the Product Liability Act are available on the website of the Consumer Affairs Agency. [https://www.caa.go.jp/policies/policy/consumer\\_safety/other/product\\_liability\\_act/](https://www.caa.go.jp/policies/policy/consumer_safety/other/product_liability_act/)

for flexible interpretation, but there are also arguments that the content of the articles themselves may not be in line with the actual situation, and the content needs to be carefully examined at the time of review.

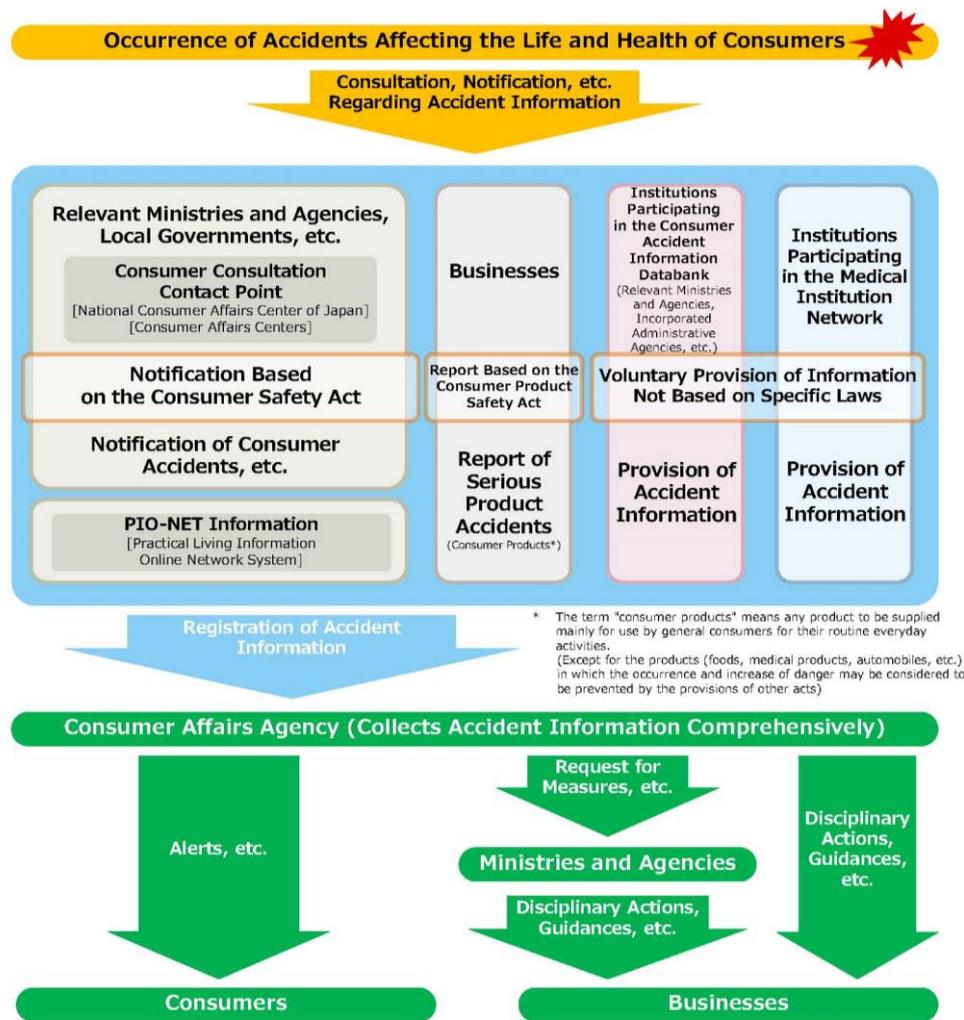
### **Consolidation and dissemination of incidents information**

The Consumer Affairs Agency is an administrative agency newly established in 2009 to support safe and secure transactions, product and service labeling, and consumer safety. It was established based on the principle of consolidating and delivering incidents information to consumers as quickly as possible, alerting them, and preventing accidents. The establishment of the Consumer Affairs Agency was triggered by an incident in which frozen Chinese dumplings were contaminated with a pesticide called methamidophos, and by an accident involving a Schindler elevator. Information on these incidents was kept within the prefectural health centers and construction bureaus, which had jurisdiction, and the damage spread because the information was not consolidated centrally. Therefore, in order to prevent the recurrence of such incidents, the government has established a notification system based on the Consumer Safety Act, which requires relevant ministries, agencies, local governments, etc. to notify the Prime Minister (Consumer Affairs Agency) of information on incidents when they become aware of consumer-related incidents (See Figure2).

There are several categories of consumer accidents under the Consumer Safety Act (see Figure 3). In the case of a serious accident, etc., the outline of the serious accident, etc. shall be immediately notified to the Prime Minister.

In fact, most of the serious accidents that have been reported are fires. In addition to products, serious accidents involving services have also been reported, such as the provision of services (use of playground equipment at amusement parks, esthetic treatments, etc.).

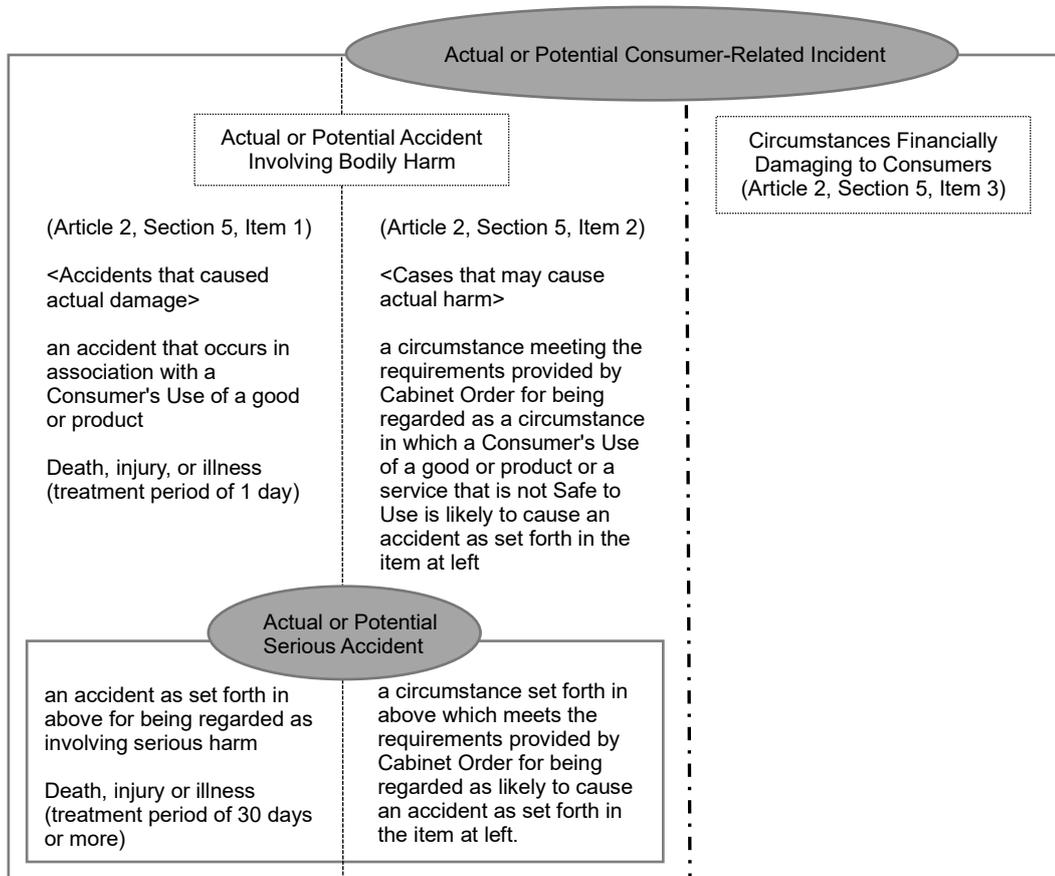
**Figure 2: Overall picture of the Consumer Affairs Agency's Collection of Incident Information to Alerts<sup>13</sup>**



The Consumer Affairs Agency requests relevant organizations, which act as notification entities, to notify it of consumer-related incidents. At present, there is no denying the fact that the number of notifications varies among local governments, and the Consumer Affairs Agency is particularly urging local governments to notify incidents. The Consumer Affairs Agency receives nearly 3,000 notifications of consumer-related incidents annually, and it has become clear that notifications of fires, accidental ingestion, and falls tend to be more common. Since there are many accidents involving the elderly, preventing such accidents is considered to be a shortcut to ensuring the safety and security of consumer life.

<sup>13</sup> Excerpt from "Notification System of Consumer Safety Act"  
[https://www8.cao.go.jp/shoushi/shinseido/meeting/kyouiku\\_hoiku/k\\_3/pdf/s3.pdf](https://www8.cao.go.jp/shoushi/shinseido/meeting/kyouiku_hoiku/k_3/pdf/s3.pdf)  
[https://www.caa.go.jp/en/policy/consumer\\_safety/pdf/Accident\\_Information.pdf](https://www.caa.go.jp/en/policy/consumer_safety/pdf/Accident_Information.pdf)

**Figure 3: Terms of Consumer-Related Incidents and Serious Accidents<sup>14</sup>**



**4. Discussion points in the question and answer session**

In the 6th session, AI and whistleblowing/consumer protection was discussed and following questions and answers were raised based on the topics presented.

**Establishment of whistleblowing system**

- ✓ In the early 2000s, there was an opinion that the whistleblowing system was a foreign system and did not fit into the Japanese culture that respects harmony, but now there is no such opinion that the said system is unnecessary. Although the actual number of whistleblowing cases within a company is unknown, it is believed that large and listed companies generate tens to thousands of whistleblowing cases annually. Additionally, since tens of thousands of whistleblowing cases are reported to administrative organs every year, and the number is increasing every year, the said system seems to be gaining ground.
- ✓ There are also reports from employees who are stationed in the company. In

<sup>14</sup> Excerpts from the "Accident Information Notification System Based on the Consumer Safety Act" [https://www.caa.go.jp/policies/policy/consumer\\_safety/other/other\\_001/meeting/pdf/100802koukankai\\_4.pdf](https://www.caa.go.jp/policies/policy/consumer_safety/other/other_001/meeting/pdf/100802koukankai_4.pdf)

addition, employees who are not directly employed by the company are also subject to the protection of the Whistleblower Protection Act.

### **Whistleblowing System Overseas**

- ✓ While the Whistleblower Protection Act is unique in Japan in that it is limited to criminal penalties, some developed countries do not have laws on whistleblowing themselves. In Germany, for example, there is no law on whistleblowing because snitching itself is not socially acceptable. The UK, on the other hand, accepts a wide range of whistleblowing. In addition, the EU requires member states to develop (codify) laws on whistleblowing systems. The U.S. does not have a systematic law, but each state has its own whistleblowing system as a state law.
- ✓ AI algorithms can be sold and used in other countries, so there are borderless areas. It is necessary to consider the whistleblowing system not only in each country, but also internationally.

### **Reporting for the purpose of consumer protection against new technologies**

- ✓ In the case of financial transactions, there are high-speed transactions such as HFT<sup>15</sup>, and in the case of consumer transactions, there is personalized pricing<sup>16</sup>, and these are AI-related matters. At the moment, advertising is not subject to criminal law, but if there are specific facts, we will have to consider which article of law to apply. Similar discussions will need to take place whenever new technologies are created in the future.

### **Linkage between the whistleblowing system and other systems**

- ✓ There is a growing trend to monitor the e-mail and chat communications of corporate employees to detect signs of bribery and cartels. In this case, it is important to combine the information from monitoring and whistleblowing in an integrated manner. Also, with the advancement of technology, if monitoring information and the contents of whistleblowing can be shared not only within a company but also with administrative organs, investigative agencies, etc., effective investigations will be possible. On the other hand, if the data is electronic, there is a possibility of falsification.
- ✓ As far as the whistleblowing system is concerned, the whistleblowing system within a company is a part of corporate governance. External reporting is also one of the ways to obtain information. With the establishment of the plea

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<sup>15</sup> HFT (High Frequency Trading) is a type of trading in which automated trading is repeated at high speed and high frequency according to a program that incorporates trading procedures and other information.

<sup>16</sup> Personalized pricing refers to price indication based on individual consumer profiling.

bargaining system and other systems, there are more and more ways to obtain information on internal corporate problems and management risks, and it is necessary to systematize the means of obtaining such information. This is the same problem within companies as it is for administrative and investigative agencies that should detect violations. At present, the whistleblowing system and the plea bargaining system are developing independently, so we have not yet reached the point of integrating them.

- ✓ Since reporting is not the end of the story, but rather an investigation and correction is required, it is also important to confirm the validity of the materials used in the investigation. It is important to consider this in the context of corporate governance.

#### **Issues with using AI as a tool**

- ✓ Defamation is subject to criminal penalties. The media may use AI to analyze or publicize personal characteristics, or criticize politicians. However, when cracking down on these, there is a risk of violating freedom of speech. This problem is not necessarily a problem that arises because of AI or algorithms (it is an existing problem in terms of the tension between free speech and published criticism). On the other hand, the use of AI to gather information itself can be problematic. For example, in France, the use of AI to collect court cases is prohibited. In the U.S., there is also a debate on how to crack down on cases where AI is used to determine the sentence.

#### **Scope of the Whistleblower Protection Act**

- ✓ There are many important reports that are not covered by the Whistleblower Protection Act. Although it is related to the fact that the Whistleblower Protection Act is limited to criminal penalties and violations of the law, corporations inherently have corporate autonomy. While illegal acts should be avoided, conducting business without being bound by existing concepts such as ethics is also a form of corporate autonomy, and the destructive creation that accompanies corporate business activities is also a source of vitality for economic activities. There are also those who argue that the government should be cautious about imposing blanket bans or regulations on unethical behavior that is exposed in the course of corporate business activities. However, it is not the case that corporate autonomy should be left to the discretion of the company, but rather, most people believe and argue that companies that provide products and services should be given a certain amount of control, taking into consideration whether or not they are trusted by consumers and other stakeholders.

- ✓ When a social consensus is reached on important reporting that is not covered by the Whistleblower Protection Act, it is possible that the government will consider it as a subject for laws and systems, but there are various opinions on whether or not to actively consider it.

### **Consumer-related accidents and AI**

- ✓ Many consumer-related accidents are caused by human error, but the use of AI is expected to increase the possibility of preventing accidents before they occur.
- ✓ Depending on the definition of AI, on a smaller scale, there have already been a report of consumer-related accident in 2016 regarding artificially intelligent robots<sup>17</sup>. On a large scale, there are products like automated driving, but they are not reported. However, there has been a large scale case in the U.S. where a self-driving car ran over a pedestrian crossing the road in March 2018.
- ✓ The Consumer Affairs Agency has also been discussing how to deal with consumer-related accidents involving automated vehicles. It is unclear whether the Digital Agency will deal with those related to AI when it is established in future. However, the Consumer Affairs Agency will be alerting consumers not only to self-driving cars but also to products that use AI.

### **Scope of Product Liability Act**

- ✓ The Product Liability Act is designed to address the property and physical damage of consumers, not the mental damage. There is also an opinion that the law should cover mental damage as well, since there are many parts of the law that are not adapted to current situation. Similar laws in other countries often include no-objects. In Japan, the Civil Code is interpreted in a flexible manner to accommodate this.
- ✓ Even if the damage is caused by human error, if the product is defective, it is subject to the Product Liability Act. If the consumer is not using the product in a normal way, it is his or her negligence. How defective the product is the point of contention.

### **Future Considerations for Product Liability Act**

- ✓ The Product Liability Act was enacted in 1994, and since its enactment, the torts of the Civil Code have not been reviewed. Therefore, it needs to be reviewed so that it can be adapted to modern society. When reviewing the law, it is necessary to clarify services and psychological damages to the extent that they can be

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<sup>17</sup> [http://www.jikojocho.go.jp/ai\\_national/search/detail.do?id=0000278899](http://www.jikojocho.go.jp/ai_national/search/detail.do?id=0000278899)

included in the articles. However, since the revision of this law will have a significant impact on current transactions in general, there is room for debate as to whether it should remain as the Product Liability Act or be integrated into the Civil Code.

### **Scope of Consumer Safety Act**

- ✓ The Consumer Safety Act also includes damage to property in its application. The National Consumer Affairs Center of Japan has received many consultation requests on unintentional purchases due to subscription services, etc. Consumer protection under the Act on Specified Commercial Transactions may be applied to those cases.

In mail-order sales, when applying for a contract, it is essentially necessary for the application and acceptance to match, but it has been pointed out that there may be cases that services may be provided without clear acceptance. Following the stipulation of standardized terms and conditions with regard to the Civil Code's Law of Obligations, the confirmation of contracts for mail-order sales will be made stricter in the future, and a contract will be formed when the intent to make a contract is clear. It has been pointed out that, as in the case of mail-order sales, application and acceptance may not be clearly taken for subscription services.

Today, transactions are becoming more complex, and there are many issues to be discussed, but the scope of the Consumer Safety Act is likely to move the discussion in the direction of the need to clarify the intentions and consent of the individual.

- ✓ Damage caused by deepfakes is not reported as a consumer-related accident, but it is reported if there is any physical damage while using the service. However, it is difficult to ascertain and determine from the accident information that deepfakes are related.

### **Disclosure of consumer-related accident information**

- ✓ Consumers can access accident information by using the accident information data bank system<sup>18</sup>. If more detailed accident information is needed, it can be obtained by filing a request for information disclosure.
- ✓ The Consumer Accident Information Databank contains a large amount of information received by the National Consumer Affairs Center of Japan, mainly in the form of requests for refunds. The content of this information is based on the reports of consumers themselves, and not on the results of scientific research.

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<sup>18</sup> <https://www.jikojoho.caa.go.jp>

- ✓ The Ministry of Land, Infrastructure, Transport and Tourism (MLIT) maintains accident information for buildings and the Ministry of Economy, Trade and Industry (METI) for automobiles, but the Consumer Affairs Agency also maintains information across the board. Internationally, there are only a few countries that have laws governing the collection and dissemination of accident information.

### **Cooperation between the Consumer Affairs Agency, related ministries, and companies**

- ✓ The Consumer Affairs Agency, in cooperation with relevant ministries and agencies, is alerting people to prevent accidents from occurring, depending on the nature of the accident information. For example, the MLIT's Housing Bureau is responsible for accidents involving falls in houses. The reason why the relevant ministries are concentrated in Kasumigaseki, Tokyo is to facilitate cooperation among them.
- ✓ Although some of the information on consumer-related accidents is applicable to other companies in the same industry, it is difficult in some respects to disclose detailed accident information to the public in order to prevent the recurrence of similar consumer accidents, because companies also have trade secrets and property rights. On the other hand, in industries where there are only a limited number of manufacturers, such as konjac jelly, education and awareness-raising activities are being conducted on how to use or how to eat and drink the product, and other common measures to prevent accidents from occurring.
- ✓ In some cases, the Consumer Affairs Agency is consulted by 100-yen store companies at the product development stage. In such cases, we provide suggestions to the extent that it does not interfere with their business.
- ✓ As a company, it would be better to manage accident information by linking complaints and consultations with information on product development.
- ✓ The entity responsible for reporting under the Consumer Product Safety Act should be the business operators. For this reason, the Consumer Affairs Agency asks companies to take the initiative in reporting. In addition, there are reports based on the Consumer Safety Act to protect companies that do not have a system in place to accept complaints, such as start-up companies, and people who do not have a system in place to report, such as individual app developers. Both parties need to complement each other to keep track of accident information.

### **Risks related to Product Liability Act and Consumer Safety Act**

- ✓ The definition of 'defect' in the Product Liability Act and the Consumer Safety Act is "a lack of safety that a product should normally have". It is applied across the

board in judicial and request norms, but what is "normal" is defined within the applicable norms. The part of a product that does not have the safety features that it normally has can be seen as a risk.

**Explaining to consumers about AI from the perspective of consumer protection**

- ✓ The relevance of AI to the content of products and services needs to be considered from the perspective of consumer protection. What is important is how to use AI in a way that does not cause life or physical damage, and if there are points where consumers are not aware that AI is being used, it is vital to fully inform consumers of the relevance of AI to the product or service.
- ✓ One of the difficulties in explaining AI products and services to consumers is that if there is a difference between the product description and the learning results of the AI model, the description may be subject to administrative punishment or punishment for misrepresentation. On the other hand, it is necessary to pay attention to the level of explanations, since there is a possibility of suffering a loss as a result of actively describing a lot of information.

We will continue to discuss AI governance in Japan and abroad through this study group.

Written by Yuki Kiyomi

Translated by Michiko Shimizu

<Outline of the 6<sup>th</sup> Session of the Study Group>

Date & Time: Wednesday, December 9, 2020, 16:00-18:00 (Zoom)

Agenda:

- Topical presentations:
  - "Whistleblowing System and Whistleblower Protection Act: Current Status and Future" provided by Mr. Tetsuya Kanda (Legal System Planning Division, Consumer Affairs Agency)
  - "Efforts to Ensure Consumer Safety" provided by Mr. Hidenori Ochiai (Consumer Safety Division, Consumer Affairs Agency)
- Question and answer session / discussion