



METI

Ministry of Economy, Trade and Industry

Revision of Unfair Competition Prevention Act

Intellectual Property Policy Office

Outline

1. Overview on Unfair Competition Prevention Act
2. Overview on this revision of the act
3. Civil remedies against wrongful acquisition and use of shared data with limited access
 - a. View of environment improvement to utilize valuable data
 - b. Image of shared data with limited access
 - c. Act of unfair acquisition, use, disclosure of shared data with limited access

1. Overview on Unfair Competition Prevention Act

Purpose of Act (Article 1)

Types of Unfair Competition (Article 2)

Creating confusion with a well-known indication of goods, etc

Imitation of the configuration of a third party's product

Infringement of Trade Secrets

Providing a product which circumvents technological restriction measures

Misleading representation regarding the place of origin, quality, etc.

⋮

Wrongful acquisition, use and disclosure of shared data with limited access

Wrongful acquisition, usage of a domain name

⋮

Acts Prohibited based on International Agreements (Article 16~18)

Prohibition of commercial use of foreign national flags, armorial bearings (Article 16) and a mark of an international organization (Article 17)

Prohibition of bribery of foreign public officials (Article 18)

Remedies

Civil Remedies
&
Criminal Remedies

Civil Remedies

Criminal Remedies

2. Overview on this revision

Revision in 2018

(a) Civil remedies against wrongful acquisition, use and disclosure of shared data with limited access [New]

— enforced in July 2019

- Defines shared data with limited access, which is protected by a management system (e.g. ID and password managing method) and provided to limited users.
- Positions wrongful acquisition, use and disclosure as acts of unfair competition.
- Provides civil remedies (claims for injunctions and damages) to victims.

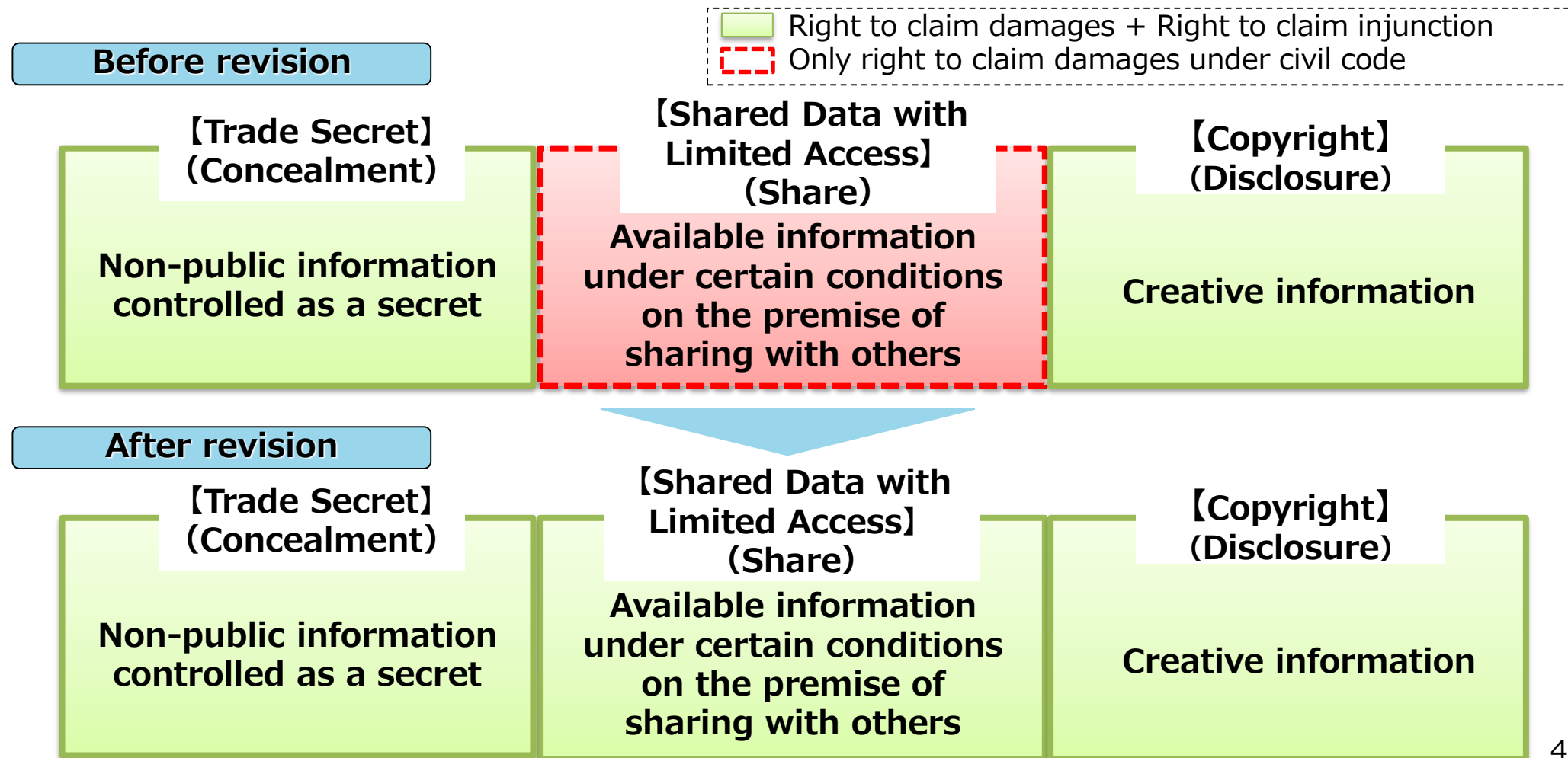
(b) Enhancing regulation on acts of unfair competition that interfere with the technological restriction measures [Revised]

— enforced in November 2018

- For example, the revised Act newly covers the act of providing services of circumventing technological restriction measures to users.

3.a. View of environmental improvement to utilize valuable data

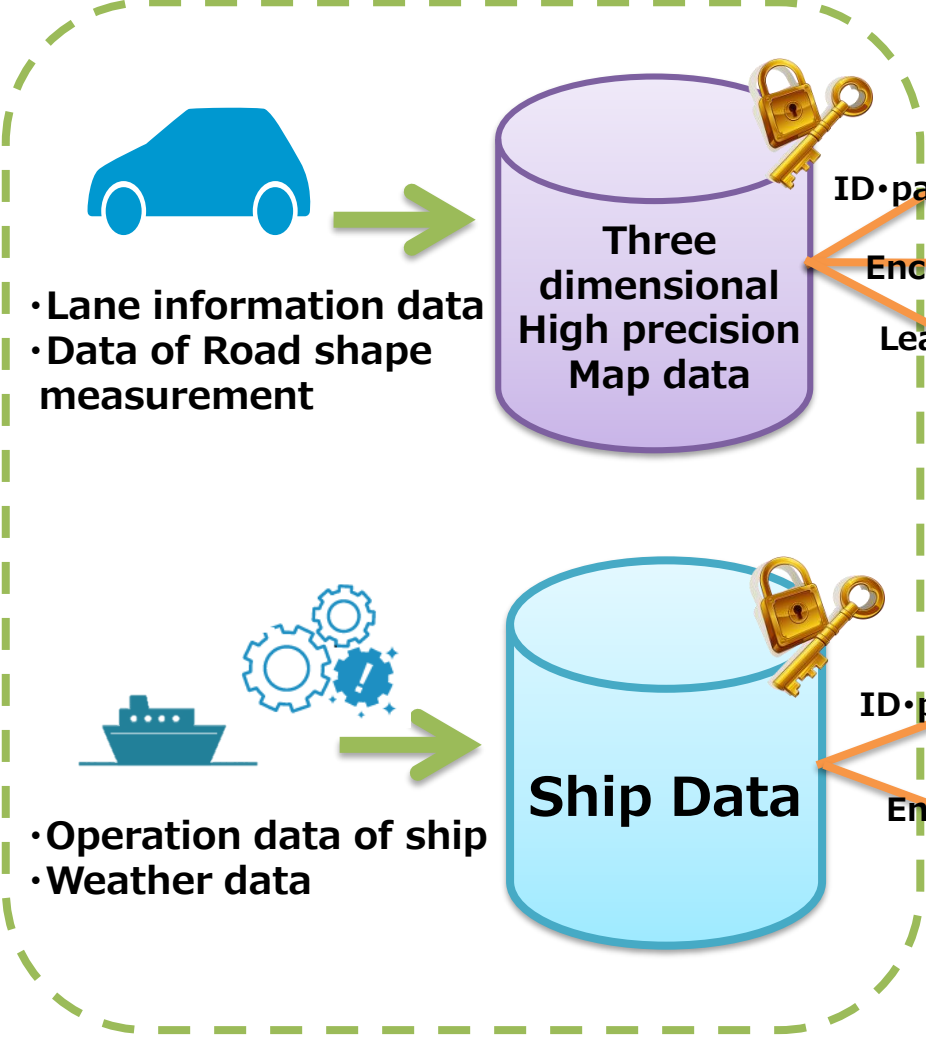
- Characteristics of valuable data
 - Easy to duplicate.
 - Circulation of wrongfully-acquired data may cause the damage rapidly and widely.
 - Difficult to stop illegal circulation in cases where data does not fall under (1) the copyright law or (2) "Trade Secret".



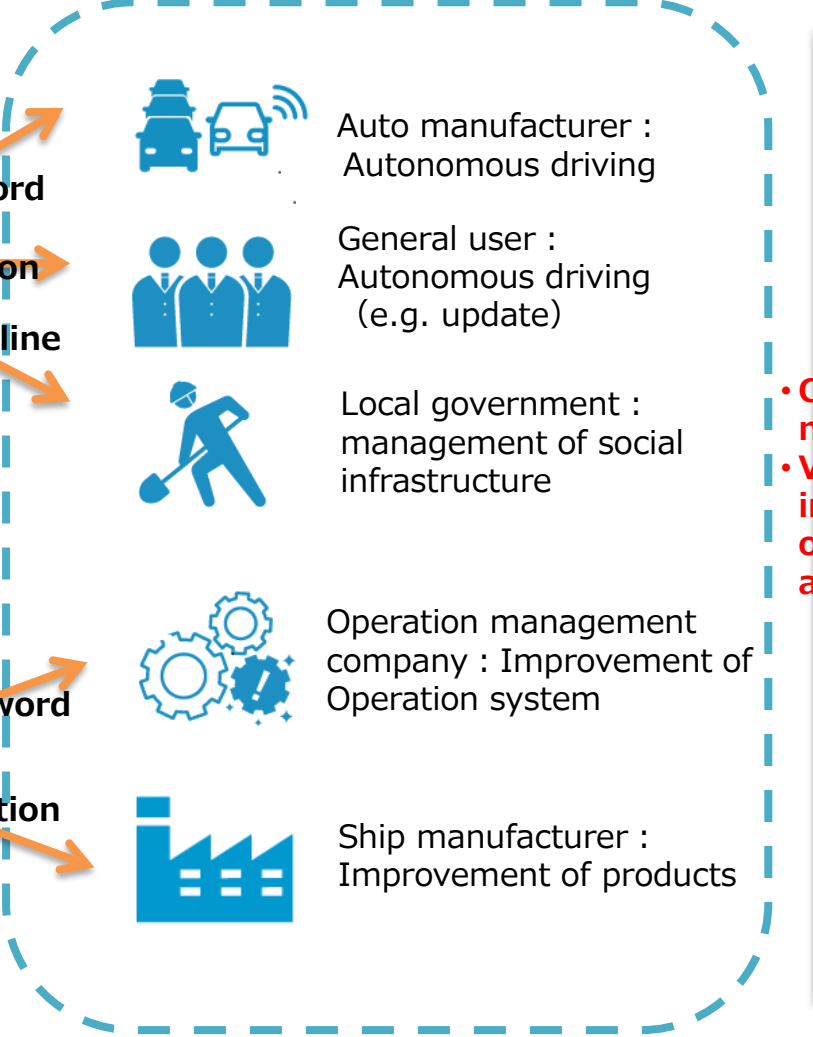
3.b. Image of shared data with limited access

- By providing/sharing shared data with limited access among companies, will lead to
 - Creation of new business
 - Value improvement of services and products

Collecting · Analysis · Processing



Encouraging data utilization

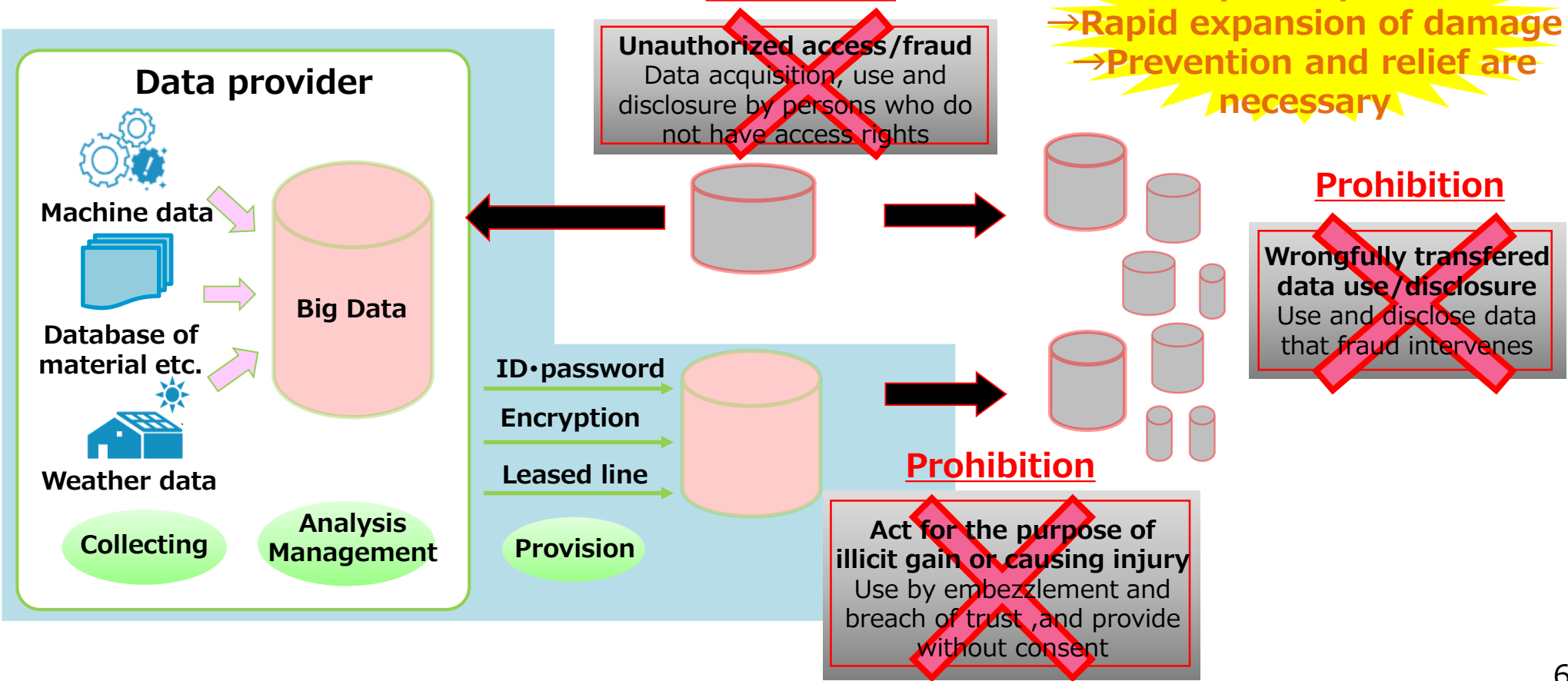


- Creation of new business
- Value improvement of services and products

3.c. Act of unfair acquisition, use, disclosure of shared data with limited access

- Prohibited acts of unfair competition for shared data with limited access:
 - Unauthorized access/fraud
 - Wrongfully transferred data use/disclosure
 - Act for the purpose of wrongful gain or causing damage, etc.

Prohibited acts of unfair competition



T h a n k y o u v e r y m u c h .

(FYI) Details of Remedies

Civil Remedies

- Right to seek an injunction (Article 3)
- Right to seek damages (Article 4)
- Presumption of amounts for loss or damage, etc. (Article 5 etc.)
- Order to produce documents to the courts (Article 7)
- Protection of trade secrets in civil court cases (Article 10 etc.)
(protective order, restriction for inspection of the case record, in-camera proceedings)
- Measures to restore business reputation (Article 14)

Criminal Remedies

The following punishments are prescribed against persons who commit certain acts of unfair competition:

- Penal Provisions (Article 21)
 - offense of trade secret infringement: Imprisonment for not more than 10 years or a fine of not more than 20 million yen (30 million yen for the purpose of use outside Japan), or both
 - any other offenses of infringements: Imprisonment for not more than 5 years or a fine of not more than 5 million yen, or both
- Corporate penalties (Article 22)
 - part of offenses of trade secret infringements: a fine of not more than 500 million yen (1 billion yen for the purpose of use outside Japan).
 - any other offenses of infringement: a fine of not more than 300 million yen.
- Punishments against an offense committed outside Japan (Article 21, paragraph(6),(7),(8))
(offense of trade secret infringement, violation of protective order, offense of bribery of a foreign public officer)

(FYI) Definition of “shared data with limited access”

- Article 2(7)

The term shared data with limited access as used in this Act means technical or business information that is accumulated to a significant extent (**Significant Accumulation**) and is managed by electronic or magnetic means (**Electromagnetic management**) as information to be provided to specific persons on a regular basis (**Limited provision**) (excluding information that is kept secret).

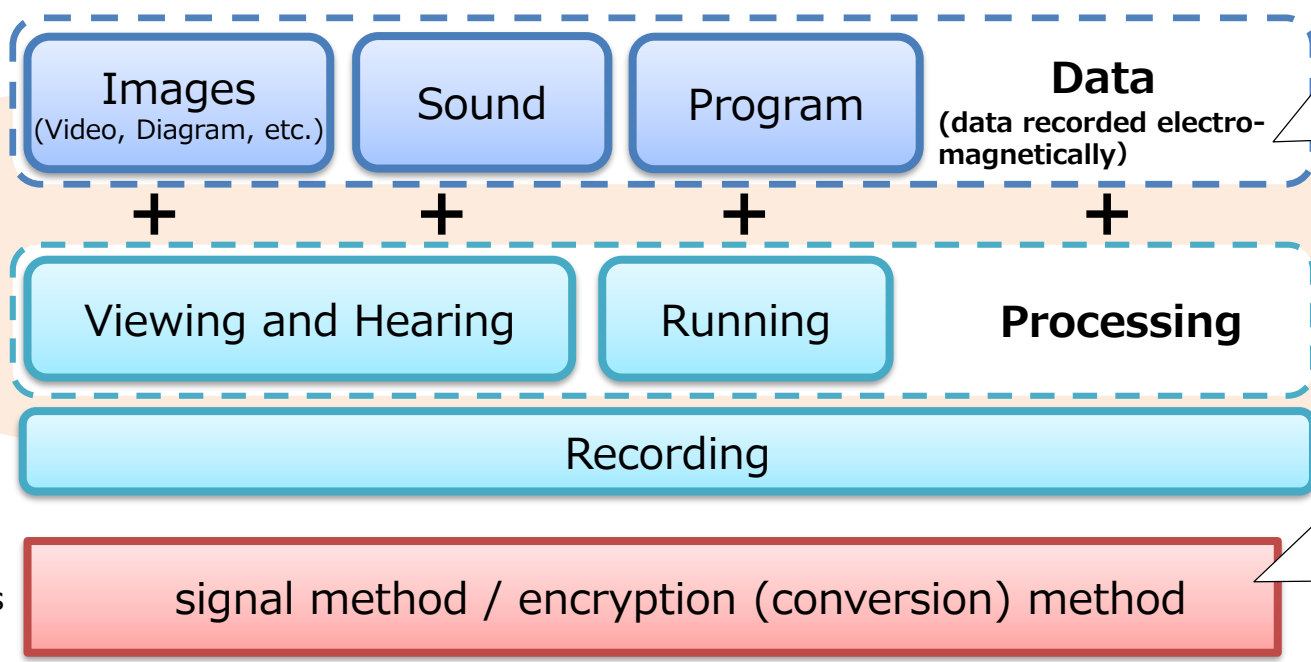
Requirement

- i. Limited provision**
- ii. Electromagnetic management (e.g. management by ID/password)**
- iii. Significant Accumulation**

<Examples>

- Map data provided for autonomous driving
- Sales data for each item collected by POS system
- Data summarizing technical information on materials such as chemical substances

(FYI) Summary of enhancing regulation on acts of unfair competition that interfere with the Technological Restriction Measures (Article 2(1)(xvii),(xviii), 2(8), 19(1)(ix))



① Added "Data (data recorded electro-magnetically)"
 e.g.:
 -data for AI deep learning
 -save data file for video game

② Clarified that current protection technology is included in TRM.
 e.g.:
 app purchased online (upgrade trial edition to regular edition)

③ Added the act of providing a code, etc. to "unfair competition".
 e.g.: sell activation code for MS office software illegally

④ Added the act of providing the service to "unfair competition".
 e.g.: visit home and modify the TV tuner to circumvent the encryption of a pay channel

*1 the function is to interfere the effectiveness of TRM

Act of interfering with TRM is not considered to be unfair competition, but it would be against another law.