Outline of “Interpretative Guidelines on Electronic Commerce and Information Property Trading”
Transactions related to Internet trading are evolving rapidly and therefore rulemaking is necessary. METI has issued “Interpretative Guidelines on Electronic Commerce and Information Property Trading” which provides interpretations of existing laws since 2002 and attempts to enhance predictability for relevant parties and to promote private-sector rulemaking.

Formulation of “Interpretative Guidelines on Electronic Commerce and Information Property Trading” = Clariﬁcation of Legal Interpretation

Flexible amendments (e.g. addition of new issues) based on trade practices, technical trends, international movements etc.

Enhancement of Predictability for Relevant Parties

- Development of appropriate business models by private sector
- Judgmental standards for ADR and consumer consultations

Important issues related to Electronic commerce and Information Property Trading are comprehensively explained in the Guideline.

For overseas business operators, by understanding the gist of the Guideline, they can be aware of essential information for conducting e-commerce business in Japan.
Issues Concerning Electronic Commerce (24 issues)
- Mistake due to Consumer Error
- Manifestation of Intention by a Minor
- Internet shopping mall Operator Responsibilities
- Responsibilities of Service Operator toward Users

Issues Concerning Presentation/Use of Information on the Internet (13 issues)
- Legal matters involved in setting up a link to another person’s website
- Presentation of Product Information on the Internet and Trademark Infringement
- Portrait Rights and Publicity Rights on the Internet
- Copyrights on the Internet

Issues Concerning Information Property Trading (19 issues)
- Product Returns by the User After the Conclusion of the License Agreement
- Duties of the User upon Contract Expiry
- Vendor Liability for Programs
- Digital content

Issues Concerning Cross Border Transactions (8 issues)
- International Jurisdiction over B-to-B and B-to-C Transactions and Applicable Law
- Cross-Border Exercise of Trademark Rights
- Defamation on the Internet, Adjudicative Jurisdiction and Applicable Law
Overview of major topics
(Issues Concerning Cross-Border Transactions)
Where Consumers in Japan Conduct Transactions with Foreign Business Entities (Application of Consumer Protection Laws)

【Issue】
If a dispute occurs between a consumer in Japan and a foreign business entity during a transaction via the internet, which country’s consumer protection laws apply and how is the dispute resolved?

【Approach】
(Applicable law)
• In cases where the legal proceedings are taken in Japan, according to Paragraph 1, Article 11 of the Act on the Application of Laws, if there is a transaction between a consumer in Japan and a foreign business entity via the internet, the consumer may be protected not only by the consumer protection provisions of the governing law agreed on by the parties, but also by the forcible provisions of the consumer protection law (ex. Act on Specified Commercial Transactions, Consumer Contract Act. see page 10, 11) of the jurisdiction of the location of the consumer’s permanent residence if that consumer asserts special effects based on such forcible provisions.

(Method, place, etc. of dispute settlement)
• If there is an arbitration agreement, that arbitration agreement prevails. Even if one party brings a suit against the other in Japanese Court, the case will be rejected. However, according to Article 3 of the Additional Rules to the Arbitration Act, the consumer can terminate the arbitration agreement.
• If there is no arbitration agreement or an arbitration agreement is canceled, a court in Japan is normally granted Adjudicative Jurisdiction when the domicile of the consumer is in Japan. (See next page for details)
Some Major consumer protection laws in Japan – The Consumer Contract Act

- Protects the interests of Consumers in consideration of the disparity in the quality and quantity of information and negotiating power between consumers and business operators
- Is directed to all non-labor contracts between consumers and business operators

**Unjust Soliciting**

- Rescission of Contract

*(Examples)*
- Misrepresentation of an important matter
- Failure to exit a consumer's residence or place of business in defiance of the consumer's wishes
- Preventing a Consumer from leaving a business operator’s place of business in defiance of the consumer's wish to leave

**Unjust Contract Clauses**

- Void

*(Examples)*
- Clauses that completely exempt business operator from liability for damages
- Clauses that include excessive cancelation fees
- Clauses that incur delayed payment penalties over 14.6% a year
- Clauses that unilaterally impair the interests of the consumer
Some major consumer protection laws in Japan – Act on Specified Commercial Transactions

- Maintains fair consumer trade by making rules on commonly problematic trade formats/practices and by cracking down on unjust solicitation by business operators

(Covered Trade formats)
1. Door-to-Door Sales
   - Sales involving direct visits to consumer homes etc.
2. Mail Order Sales
   - Sales pursued by advertisements in newspapers, magazines, through the internet etc., and offers via mail, telephone etc.
3. Telemarketing Sales
   - Sales pursued by telephone solicitation and subsequent offers
4. Multilevel Marketing Transactions
   - Transactions pursued by soliciting individuals as salespersons and having them solicit other salespersons to expand the chain of sales
5. Providing Specified Continuous Services
   - The following 6 services: esthetic clinic, language education, home tutor, private preparatory school, matrimonial agency, and PC school services
6. Business Opportunity Sales Transactions
   - Transactions where consumers are solicited into a business and monetary costs for items needed to run the business are charged to the consumer
7. Door-to-Door Purchase
   - Purchase of items involving a visit to a consumer’s home etc.

(Major Stipulations on e-Commerce)
1. Advertising Regulations
   - Selling price, shipping charges, the timing and means of payment etc. must be indicated
   - Misleading advertisement etc. strictly prohibited
   - Unsolicited e-mail advertisement is strictly prohibited
2. Notice of Acceptance in Mail Order Sales
   - If advanced payment was made but immediate delivery is not possible must re-verify acceptance or rejection of the initial offer
3. Prohibition of Anti-Consumer Behaviors
   - Rejection or delay of reimbursements upon cancellation of contract is strictly prohibited
   - Forcing customers to enter into a sales contract against their will is strictly prohibited
4. Administrative and Criminal Punishment
   - A business operator who breached the above is subject to business improvement orders, business-suspension orders and criminal punishment
5. Return Rules
   - Returnable within 8 days after delivery (unless there is explicit indication that the product is non-returnable)
A prior agreement on international jurisdiction over a dispute with regard to a consumer contract

**Issue**
A prior agreement on international jurisdiction over a dispute with regard to a consumer contract

**Approach** (the following is the explanation, on the assumption that the disputes are brought into the courts in Japan)

- **A prior agreement on international jurisdiction over a dispute with regard to a consumer contract is, in principle, void** (Paragraph 5, Article 3-7, Act on Code of Civil Procedure.)

- However, such an agreement between a business entity and a consumer is effective in the following cases: (1) where both parties agree on the details of international jurisdiction that a legal action may be brought to a court of law in the country of the consumer’s domicile at the time of the execution of the consumer contract; (2) where the consumer brings a legal action to a court in the agreed-upon country on the basis of the parties’ agreement on international jurisdiction; or (3) where the consumer invokes the parties’ agreement on international jurisdiction when the business entity brings a legal action.

- Therefore, for transactions between a consumer and a business entity, an agreement that the international jurisdiction lies in a court of the country of the business entity’s location is not enforceable, unless the consumer actively takes legal actions to effect such agreement.
【Issue】
When an under-age person (a minor) in Japan conducts a transaction with a foreign business entity on the Internet, will the legal capacity of the consumer be judged by the laws of Japan?

※ In Japan, according to article 4 of Civil Code, minors are people who have not yet reached 20 years of age.

【Approach】
• According to Article 4 of “Act on General Rules for Application of Laws”, when a minor in Japan conducts a transaction with a foreign business entity on the Internet, the law governing the legal capacity to contract of the consumer in Japan is, as a matter of principle, the laws of Japan, which are the laws of the customer’s country of nationality.

• When a minor such as a juvenile, who is a person without capacity to contract, makes an offer, the contract is void, as the offer is made by a person without capacity and therefore is not legally able to undertake an act of trade.

• On the other hand, when a consumer in Japan visits a foreign country and conducts a transaction in that country, even where the legal capacity of this consumer is restricted under the laws of Japan, s/he will be regarded as having full legal capacity if s/he is a person of full legal capacity under the laws of the foreign country, which are the law governing the location of the act.
【Act on General Rules for Application of Laws】
(Person's Capacity to Act)
Article 4
(1) The legal capacity of a person to act shall be governed by his/her national law.
(2) Notwithstanding the preceding paragraph, when a person who has performed a juridical act is subject to the limitation of his/her capacity to act under his/her national law but has full capacity to act under the law of the place where the act is done (lex loci actus), that person shall be deemed to have full capacity to act, only in cases where all the parties were present in a place governed by the same law at the time of the juridical act.

(Special Provisions for Consumer Contracts)
Article 11
(1) Even when the law applicable to the formation and effect of a contract (excluding a labor contract: hereinafter referred to as a "Consumer Contract" in this Article) between a consumer (meaning an individual, excluding an individual who becomes a party to a contract as a business or for a business; hereinafter the same shall apply in this Article) and a business operator (meaning a juridical person and any other association or foundation and an individual who becomes a party to a contract as a business or for a business; hereinafter the same shall apply in this Article) as a result of a choice or a change of law under Article 7 or Article 9 is a law other than the law of the consumer's habitual residence, if the consumer has manifested his/her intention to the business operator that a specific mandatory provision from within the law of the consumer's habitual residence should be applied, such mandatory provision shall also apply to the matters stipulated by the mandatory provision with regard to the formation and effect of the Consumer Contract.
【Arbitration Act】
Supplementary Provisions
(Exception Relating to Arbitration Agreements Concluded between Consumers and Businesses)
(1) For the time being until otherwise enacted, any arbitration agreements (excluding arbitration agreements described in the following article; hereafter in this article referred to as the “consumer arbitration agreement”) concluded between consumers (which hereafter in this article shall mean consumers as described in article 2, paragraph (1) of the Consumer Contract Act [Law No. 61 of 2000]) and businesses (which hereafter in this article shall mean businesses as described in article 2, paragraph (2) of the same law) subsequent to the enforcement of this Law, the subject of which constitutes civil disputes that may arise between them in the future, shall follow the provisions described in paragraphs (2) through (7).
(2) A consumer may cancel a consumer arbitration agreement. Provided, this shall not apply in the event that the consumer is a claimant in arbitral proceedings based on the consumer arbitration agreement.
(Ref) Act on Code of Civil Procedure

【Act on Code of Civil Procedure】
(Agreement on Jurisdiction)
Article 3-7

(1) Parties may establish, by agreement, the country in which they are permitted to file an action with the courts.

(2) The agreement as referred to in the preceding paragraph is not valid unless it is made regarding actions that are based on a specific legal relationship, and executed by means of a paper document.

(3) If Electronic or Magnetic Records (meaning records used in computer data processing which are created in electronic form, magnetic form, or any other form that is otherwise impossible to perceive through the human senses alone; the same applies hereinafter) in which the content of the agreement is recorded are used to execute the agreement as referred to in paragraph (1), the agreement is deemed to have been executed by means of a paper document and the provisions of the preceding paragraph apply.

(4) An agreement that an action may be filed only with the courts of a foreign country may not be invoked if those courts are unable to exercise jurisdiction by law or in fact.

(5) An agreement as referred to in paragraph (1) which covers Consumer Contract disputes that may arise in the future is valid only in the following cases:

(i) if the agreement provides that an action may be filed with the courts of the country where the Consumer was domiciled at the time the Consumer Contract was concluded (except in the case set forth in the following item, any agreement that an action may be filed only with a court of such a country is deemed not to preclude the filing of an action with a court of any other country);

(ii) if the Consumer, in accordance with said agreement, has filed an action with the courts of the agreed-upon country, or if an Enterprise has filed an action with the Japanese courts or with the courts of a foreign country and the Consumer has invoked said agreement.
Overview of major topics (Issues Concerning Electronic Commerce)
**Approach**

When a party to an electronic contract is a minor, in principle, if such contract is entered into without parental consent, s/he can deny the validity of the contract by revoking his/her expression of intention. However, in an electronic transaction, if a minor intentionally enters a false date of birth at a company’s age confirmation screen, and if, as a consequence, a company supposes that s/he is of age, the minor may be deprived of the right to rescind his/her expression of intention by Article 21 of the Civil Code, due to “using manipulation/fraudulent means”. Whether an act falls within “manipulating fraudulent means” is to be decided based on concrete facts, by comprehensively taking case-specific circumstances into account.

(Some examples of the case-specific circumstances)

- The age of the minor
- The nature of the product/service
- The nature of the age-verification webpage displayed by the seller

【Ref】- Case where a minor would be permitted to rescind (considered as not fraudulent):
  - The screen simply asks, “Are you of age?” and prompts the minors to click on “Yes”.

【Issue】

An under-age person (a minor) purchased a product online. The seller insists, “It was confirmed that the buyer was an adult when accepting the offer/application.” Can the buyer cancel the offer and deny the payment?
Returning Goods Purchased over the Internet

【Issue】
In which cases can the consumer return goods purchased over the Internet?

[Approach]
• With the statutory “right to return” for mail order under the Specified Commercial Transaction Act, goods purchased through advertisements without special provisions on cancellation can be returned (cancelation of sales contract) under some conditions.

[Requirements for application of the Statutory Right to Return]
• The counterparty of the contract must be the seller who advertised the sales conditions for the products.
• The appropriate actions to return the product must occur within 8 days from the day the product subject to the sales contract in question was delivered”.
• There must be a communication of the intention to rescind or cancel the contract.

[Exemption Requirements for the Statutory Right to Return]
• Specific provisions on cancellation in the advertisement
• Specific provisions on cancellation in the final order screen
  * Such representations should be clearly legible in an easily visible location and display format so that the customer can easily recognize the provision(s)
    → Another guideline provides examples
• Aside from the statutory right to return, a consumer can return purchased goods as a result of cancelation of a sales contract in such cases where the seller defaults or the goods have a latent defect.

[Ref] Article 15-2 of the Specified Commercial Transaction Act
• It is stipulated that a consumer can cancel his/her order within 8 days after receiving goods bought through mail order, unless the seller indicated special provisions on cancellation in its advertisement.
In B-to-C electronic transactions, if the business entity has taken “measures to confirm” the consumer’s intention to make an offer, it can assert the validity of the formation of the contract even if the consumer made mistakes in creating his/her offer(*). What specifically are these “measures“?  (*) Article 3 of Electronic Consumer Contracts Act (See page 16)

The following are acceptable as "confirmation measures“:
- Construction of a webpage on which the consumer can clearly understand that by clicking a certain transmission button, a concrete offer is made
- Construction of a webpage on which the concrete contents of the consumer’s offer are clearly displayed to the consumer and on which he is given an opportunity to revise the offer prior to making a final offer

On the other hand, if there is no set "final confirmation screen" or the contents of the intended purchase are displayed on the same screen but at a different location from the transmission button for final payment, the “confirmation measure“ may be found inadequate and any contract may be voided.

Examples that acceptable as “confirmation measures”

Example that will possibly be rejected as a “confirmation measure”
Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice

(Special Provision to the Civil Code Concerning Electronic Acceptance Notice)
Article 3  The proviso to Article 95 of the Civil Code shall not apply to the cases where there is a mistake regarding any element in an electronic consumer contract in the course of making an offer or accepting the offer for an electronic consumer contract by a consumer, and when such mistake falls under any of the following items; provided, however, that this shall not apply to the cases where the business entity that is the counterparty to such electronic consumer contract (including the person entrusted by the business entity, the same shall apply hereinafter) has taken measures to confirm the consumer's intention to make an offer or to accept the offer by electromagnetic means on the visual browser, or where the consumer manifests expressly his/her intention to the business entity that there is no need for such confirmation measures.

(i) Where the consumer did not intend to manifest his/her intentions to make an offer or to accept the offer for an electronic consumer contract with such business entity at the time when he/she transmitted such manifestation of intention by using his/her computer.

(ii) Where the consumer intended to manifest his/her intention different from the one actually manifested in making an offer or accepting the offer for the relevant electronic consumer contract at the time when he/she transmitted such manifestation of intention by using his/her computer.

(Special Provision to the Civil Code Concerning Electronic Acceptance Notice)
Article 4  The provisions of Article 526, Paragraph 1 and Article 527 of the Civil Code shall not apply to the cases where an electronic acceptance notice is dispatched for a contract made between persons at a distance.