

COUNTRY REPORT: JAPAN

Japan has a comprehensive suite of modern laws that support and facilitate the digital economy and cloud computing.

It is particularly noteworthy that Japan has signed the Convention on Cybercrime — it was one of the first non-European countries to do so and has set an example for other countries. Japan updated its cybercrime legislation in 2011 and intends to ratify the Convention on Cybercrime soon.

Japan also has comprehensive privacy legislation in place, as well as intellectual property laws that cover the full range of protections relevant to cloud computing.

Japan is very active in the development of international standards.

Broadband penetration in Japan is already very high. The government has committed to ensuring that by 2015, all households will have very high-speed fiber broadband connections.

Q JAPAN	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY		
1. Are there laws or regulations governing the collection, use or other processing of personal information?	✓	The Law for Protection of Personal Data 2003 has applied to the private sector since 2005. The Law on the Protection of Personal Information Held by Administrative Organs applies to the public sector
2. What is scope & coverage of privacy law?	Comprehensive	The law covers both the public and private sectors, although there is a general exemption for organizations that hold less than 5,000 records.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	ⓘ	Although Japanese law does contain some unique provisions, the core principles are based on a mix of the OECD Guidelines and the EU Directive. The exemption for small data holdings in Japanese law is not compatible with the EU Directive.
4. Is the privacy law compatible with the Privacy Principles the APEC Privacy Framework?	✓	Japan is a member of APEC and the Japanese privacy law complies with the APEC Privacy Framework.
5. Is an independent private right of action available for breaches of data privacy?	Available	Article 13 of the Constitution of Japan (1946) states: All of the people shall be respected as individuals. The right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs. An individual can initiate an action against a breach of data privacy based upon torts theory. These Constitutional provisions have been used in private actions against the Government (but not against the private sector).
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	Sectoral Regulator	There is no central privacy regulator in Japan. Instead, each sectoral regulator takes on the role of privacy regulator for that sector (e.g. Ministry of Health, Labor, and Welfare for the employment, Ministry of Internal Affairs and Communications for the telecommunications sector).
7. What is the nature of the privacy regulator?	Other Government Official	The exact nature of the regulatory body is different in each sector — sometimes it is the relevant minister, in other cases it is the sectoral regulator (e.g. The Financial Services Agency). The relevant minister has the authority to ask for a report from the private sector organization and issue orders for corrective actions pursuant to the privacy law. Many of these bodies publish Guidelines under the Law for Protection of Personal Data 2003, and although these are not binding, they are generally adhered to by regulated businesses.
8. Are data controllers free from registration requirements?	✓	There are no requirements for registration in Japanese privacy law.

Q JAPAN	RESPONSE	EXPLANATORY TEXT
9. Are cross border transfers free from registration requirements?	✓	There are no requirements for registration for overseas transfer of data. However, a range of EU style rules apply to data transfers to both domestic and global third party service providers, including a requirement to supervise sub-contractors when data is transferred to a third party.
10. Is there a breach notification law?	🕒	There is no consistent data breach notification requirement across the entire industry in Japan. This is because the rules are set out in the sectoral guidelines administered by different Government agencies. Some of these guidelines do include breach notification requirements (e.g. the Ministry of Economy, Trade and Industry (METI) guidelines).
SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✓	The Electronic Signature Law states that an electro-magnetic record shall be presumed to be authentic if an Electronic Signature is executed by the signatory. An 'Electronic Signature' is defined as a means, with respect to the information which is able to be recorded in an electro-magnetic record (which is itself defined as any record produced by electronic, magnetic, or any other means unrecognizable by natural perceptive function, and used for computer data- processing), to certify that such information is produced by the person using that means, and by which it is possible to confirm whether such information is changed or not.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	✓	Japan has an entirely self-regulatory system of content regulation for online services, although there are some recent proposals for Internet filtering. Additionally mobile phone network operators and suppliers of devices that connect to the Internet have an obligation to provide Internet filtering to protect juveniles.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Limited coverage in Legislation	Article 20 of the Personal Information Protection Act (Security Control Measures) provides that 'an entity handling personal information must take necessary and proper measures for the prevention of leakage, loss, or damage, and for other control of security of the personal data'. Some other best practice guidance is provided by regulators and industry associations, but Article 20 is the only binding legal requirement.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	Limited coverage in Legislation	Security audits are considered in the Personal Information Protection Act as one measure that can be used to comply with the privacy and outsourcing provisions contained in the legislation. These may be relevant to cloud computing.
5. Are there security laws and regulations requiring specific certifications for technology products?	Comprehensive requirements (including common criteria)	Japan is a full member of the Common Criteria Recognition Agreement (CCRA) < http://www.commoncriteriaportal.org >. Japan Information Technology Security Evaluation and Certification Scheme manages the provision of certifications. Some very specific certifications are required under the 2005 Standards for Information Security Measures for Central Government Computer Systems, but these only apply to 'important e-government information systems and software developments'.
CYBERCRIME		
1. Are there cybercrime laws in place?	✓	Cybercrimes are covered by a combination of provisions in the Act Concerning the Prohibition of Unauthorized (Computer) Access (Unauthorized Access Act) and the Criminal Code .
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✓	Japan signed the Council of Europe Convention on Cybercrime in 2001. In July 2011, Japan amended the Criminal Code to include provisions that comply with the Convention. Japan is expected to ratify the Convention in the near future.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?	Access with a warrant	There is no specific law to address the access by law enforcement agencies to encrypted data. However, if an investigation is necessary and a search warrant is issued, encrypted data should be made accessible.
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Japan is a signatory to the Council of Europe Convention on Cybercrime and extraterritoriality applies to any cybercrimes covered by that Convention. Japan has also signed a number of relevant mutual assistance agreements with other countries.

Q JAPAN	RESPONSE	EXPLANATORY TEXT
INTELLECTUAL PROPERTY RIGHTS		
1. Is the country a member of the TRIPS Agreement?	✓	Japan became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	✓	Japan has implemented the TRIPS agreement in local laws.
3. Is the country party to the WIPO Copyright Treaty?	✓	The WIPO Copyright Treaty entered into force in Japan in 2002.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	✓	Japan has implemented the key provisions of the Treaty. However, protection against anti-circumvention devices remains limited in Japan.
5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✓	Articles 23(1), 2(1)(ix-4) and 2(1)(ix-5) of the Copyright Act 1970 grants right holders the ability to control the making available of their works on the Internet. Civil sanctions and criminal sanctions are available courses of action.
6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✓	Article 119 of the Copyright Act 1970 states that breaches shall be punishable by imprisonment or by a fine or by both.
7. Are there laws governing ISP liability for content that infringes copyright?	✓	The Provider Liability Limitation Law 2002 limits ISP liability for copyright infringing content.
8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	✓	ISPs may be held liable if they were either aware of the infringement or were aware of the information and should have known of the infringement, and could technically prevent the transmission of the information. Any person whose right is allegedly infringed by transmission of the information via the Internet can request that the ISP disclose the person who transmitted the information, and the ISP may disclose such information if the right of the requesting person has been obviously infringed and the requesting person has legitimate reason to be entitled to such disclosure.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Civil	ISP liability is civil.
10. Must ISPs takedown content that infringes copyright, upon notification by the right holder?	✓	The 'safe harbor' provisions concerning the liability against a subscriber for Japanese ISPs, include a notice and takedown regime that provides a chance for a subscriber to explain and respond to the claims from copyright owners, before the ISP terminates its files/activities.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	✓	ISPs need to contact subscribers to receive the safe harbor protections under the law.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	Comprehensive protection	There is no specific protection in place for cloud computing, but Japan offers strong protection through a combination of comprehensive IP laws and cybercrime laws.
INTEROPERABILITY		
1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?	✓	Standards in Japan are developed under the 'Procedures Concerning Establishment, etc. of JIS, Including Patent Rights, etc.' (2006). The national standards body — Japanese Industrial Standards Committee (JISC) < http://www.jisc.go.jp > — is established and recognized by the Government under the Industrial Standardization Law.
2. Is there a regulatory body responsible for standards development for the country?	✓	The Japanese Standards Association (JSA) < http://www.jsa.or.jp > states that its objective is 'to educate the public regarding the standardization and unification of industrial standards, and thereby to contribute to the improvement of technology and the enhancement of production efficiency'. JSA has a combined management and promotional role in the standards process. However, standards themselves are developed and regulated by the Japanese Industrial Standards Committee (JISC).

Q JAPAN	RESPONSE	EXPLANATORY TEXT
INTERNATIONAL HARMONIZATION OF RULES		
1. Are e-commerce laws in place?	🔵	There is not a general law on e-commerce. The Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice, the Law Concerning Electronic Signatures and Certification Services 2000 and the Act on Specified Commercial Transactions provide further guidance.
2. What international instruments are the e-commerce laws based on?	Not Applicable	
3. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✔️	The Japanese Government does not impose tariffs or other trade barriers.
4. Are international standards favored over domestic standards?	✔️	Japan prioritizes compliance with international standards. Japan is a party to the WTO Agreement on Technical Barriers to Trade.
5. Does the government participate in international standards setting process?	✔️	Japan participates in relevant ISO and IEC standard setting processes and is a full member of the ISO.
PROMOTING FREE TRADE		
1. Are there any laws or policies in place that implement technology neutrality in government?	🔵	Japan has implemented several phases of the E-Japan Strategy. These have included some limited policy commitments to interoperability, without any detailed requirement for technology neutrality in Government policy. < http://www.kantei.go.jp/foreign/policy/it/index_e.html >
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?	✔️	There are no specific mandatory requirements in laws or policies.
3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards, or technologies?	✔️	There is no specific procurement barrier in place.
4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider?	✔️	Japan is a member of the WTO plurilateral Agreement on Government Procurement, which includes rules guaranteeing fair and non-discriminatory conditions of international competition. These rules cover most large contracts. No preferences are granted to domestic suppliers with regard to procurement covered by the Agreement on Government Procurement.

Q JAPAN	RESPONSE	EXPLANATORY TEXT
INFRASTRUCTURE, STATISTICS AND INDICATORS		
1. Is there a National Broadband Plan?	<ul style="list-style-type: none"> By 2015, all households to have very high speed fiber broadband (FttH) connections 	<p>Japan is characterized by having one of the most extensive broadband fiber (FttH) deployments in the world, with the largest number of FttH users in the world. Japan has an actively managed competitive access regime and has had at least 6 significant ICT strategies and plans over the last decade — typically the targets are met and there is progression to the next strategy. This puts Japan in a unique position, with one of the most complete broadband infrastructures in the world. Subsequent ICT strategies are focusing on increasing the uptake of FttH amongst the Japanese population — which is regarded as low with 30% of households utilizing FttH, whereas 90% of households have access.</p> <p>In 2001, the Japanese Ministry of Internal Affairs and Communications (MIC) developed the e-Japan Strategies <http://www.soumu.go.jp/menu_seisaku/ict/u-japan_en/new_outline01.html> and set the following targets:</p> <ul style="list-style-type: none"> By 2005, 30 million households would have high speed broadband and By 2005, 10 million households have ultra-high speed broadband. <p>In March 2005, Japan exceeded these targets and there were 46.3 million high speed (DSL) and 35.9 million ultra-highspeed (FttH) broadband connections.</p> <p>Once the broadband goals established in the e-Japan strategy had been reached, Japan moved towards goals set in its u-Japan policy — ‘a seamless ubiquitous network environment will be created in which people can receive services without being conscious of the networks (wired or wireless).’ In 2005, under the u-Japan policy, the Ministry of Internal Affairs and Communications (MIC) published The Next Generation Broadband Concept 2010. This identified two important targets:</p> <ul style="list-style-type: none"> By 2008, every municipality in Japan to have broadband access By 2010, over 90% of Japanese homes to have access to access networks capable of upload speeds in excess of 30 Mbps. Note: this is a significantly higher target than specifying a download speed and effectively excludes at a minimum FTTC and Wireless solutions from the plan. <p>By mid 2009, Japan had both the highest proportion of fiber based broadband connections and the highest number of FttH subscribers for any country (15.5 million) — the next countries being China (10 million), Korea (8 million) and USA (4.8 million).</p> <p>In December 2010, Japan released ‘A new strategic vision of growth (Haraguchi vision II)’ <www.soumu.go.jp/menu_kyotsuu/topics/s_topics100506.html> which contained a number of targets, including:</p> <ul style="list-style-type: none"> By 2015, completion of ‘New Broadband Super Highway (Hikari no Michi)’ <www.soumu.go.jp/main_sosiki/joho_tsusin/eng/councilreport/pdf/101130_2.pdf> By 2015, 100% of households to have access to broadband services at speeds exceeding 100 Mbps (FttH) By 2015, increase the household use of broadband (FttH) from 30% to 100%
2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	Limited Regulation and extensive public debate	<p>In Japan there has been a hybrid approach to promoting and regulating net neutrality, which includes a statement of acceptable practices from the Minister and pro-competitive regulation.</p> <p>The Ministry of Internal Affairs and Communications released a net neutrality Report in 2007. The Report discusses the fair allocation of network development costs and fair access to the network by telecommunications operators, including content providers.</p> <p>A guideline for ‘packet shaping’ was issued in May 2008, which allows packet shaping in exceptional circumstances.</p> <p>Voice over IP services are also regulated and a specific license is required. By mid 2009, Japan had both the highest proportion of fiber based broadband connections and the highest number of FttH subscribers for any country (15.5 million) — the next countries being China (10 million), Korea (8 million) and USA (4.8 million).</p>
3. Base Indicators		
3.1. Population (2010)	126,535,920	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
3.2. Urban Population (%) (2010)	67%	[World Bank, Data Catalog, Indicators, Urban Population % (2011) < http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS >]
3.3. Number of Households (2009)	47,334,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (2009) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
3.4. Population Density (people per square km) (2010)	350	[World Bank, Data Catalog, Indicators, Population Density (2011) < http://data.worldbank.org/indicator/EN.POP.DNST >]

Q JAPAN	RESPONSE	EXPLANATORY TEXT
3.5. Per Capita GDP (USD 2010)	\$42,820	[International Monetary Fund (IMF), World Economic Outlook Database (April 2011) < http://www.imf.org/external/pubs/ft/weo/2011/01/weodata >]
3.6. ICT expenditure as % of GDP (2008)	7%	[World Bank, Little Data Book on ICT (2009) < http://data.worldbank.org/products/data-books/little-data-book-on-info-communication-tech >]
3.7. Personal Computers (% of households) (2010)	89%	In 2010, 88.5% of households in Japan have personal computers. This is a 3% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2010) (Score is out of 10 and includes 152 countries)	7.42	Japan has an ICT Development Index (IDI) score of 7.42 (out of 10), resulting in a rank of 13 (out of 152 economies). The 2010 IDI for Japan has improved from a rank of 11 since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
4.2. World Economic Forum Networked Readiness Index (2010–2011) (Score is out of 7 and includes 138 countries)	4.95	Japan has a Networked Readiness Index (NRI) score of 4.95 (out of 7), resulting in an overall rank of 19 (out of 152 economies) and a rank of 19 in the high income grouping of countries/economies. [World Economic Forum, The Global Information Technology Report (2010–2011) < http://www.networkedreadiness.com/gitr >]
4.3. International Connectivity Score (2011) (Score is out of 10 and includes 50 countries)	5.89	Japan has a Connectivity Score of 5.89 (out of 10), resulting in a rank of 16 (out of 25) in the Innovation-driven grouping of countries/economies. [Nokia Siemens, Connectivity Scorecard (2011) < http://www.connectivityscorecard.org >]
4.4. IT Industry Competitiveness Index (2011) (Score is out of 100 and includes 66 countries)	63.40	Japan has an IT Industry Competitiveness Index Score of 63.4 (out of 100), resulting in a rank of 16 (out of 66 countries/economies included in the index). The 2011 index score is a 5.9% decrease on the 2009 score. Japan has moved down the ranking by 4 places since 2009. [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) < http://globalindex11.bsa.org >]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2010)	101,228,736	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as Percentage of Population (2010)	80%	In 2010, 80% of the population in Japan used the Internet. This is a 6.1% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
5.3. International Internet Bandwidth (bits per second per internet user) (2010)	15,477	Japan has increased its International Internet Bandwidth (per Internet user) by 103% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
5.4. International Internet Bandwidth (2010) (total gigabits per second (Gbps) per country)	1,567	[calculated from 8.5.3 and 8.5.1]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2010)	34,055,343	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
6.2. Fixed Broadband Subscriptions as % of households (2010)	72%	Note: this is skewed by business usage (refer to OECD comments about this) [calculated from 8.3.3. and 8.6.1.]

Q JAPAN	RESPONSE	EXPLANATORY TEXT
6.3. Fixed Broadband Subscriptions as % of population (2010)	27%	<p>Japan has increased its Fixed Broadband Subscriptions (as a % of the population) by 13% since 2008.</p> <p>In 2010, the pattern of Japan's growth of fixed broadband has continued. DSL has decreased, while cable and fiber/LAN has increased. 58% of Japan's broadband subscriptions are very high speed FttX connections, making Japan the OECD country with the highest proportion of fiber broadband subscribers.</p> <p>In the OECD, Japan is ranked 16 (out of 34) for Fixed (Wired) Broadband Subscribers as a percentage of population [OECD Broadband Subscribers (Dec 2010) – http://www.oecd.org/sti/ict/broadband]</p> <ul style="list-style-type: none"> • DSL: 6.7% • Cable: 4.5% • Fiber/LAN: 15.5% <p>Total: 26.7% (34,044,262 subscriptions) and this represents a 8% increase from 2009. The OECD average total is 24.9%.</p> <p>Note: There may be minor variations in the ITU and OECD subscriber totals due to definition, timing or population baseline differences.</p> <p>[International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]</p>
6.4. Fixed Broadband Subscriptions as % of Internet users (2010)	34%	[calculated from 8.5.1 and 8.6.1]
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2010)	120,708,670	<p>Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc)</p> <p>[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]</p>
7.2. Active mobile-broadband subscriptions per 100 inhabitants (2010)	88%	<p>Japan has increased the number of Active Mobile-Broadband Subscriptions (as a % of the population) by 20% since 2008.</p> <p>The OECD figures below present a breakdown on the type of mobile broadband connections in Japan. Japan is distinguished by having the largest proportion (and number) of 'standard mobile broadband subscriptions' in the OECD — 77% (112,377,358 subscriptions)</p> <p>In the OECD, Japan is ranked 5 (out of 34) for Terrestrial Mobile Wireless Broadband Subscribers as a percentage of population [OECD Broadband Subscribers (Dec 2010) – http://www.oecd.org/sti/ict/broadband]</p> <ul style="list-style-type: none"> • Satellite: 0% • Terrestrial fixed wireless: 0% • Standard mobile broadband subscription: 76.7% • Dedicated mobile data subscriptions: 0% <p>Total: 76.7% (112,377,358 subscriptions). The OECD average total is 41.6%.</p> <p>Note: The mobile broadband subscription types were first reported by OECD in 2010. Currently the ITU data does not have this granularity.</p> <p>Note: The OECD figures include mobile data subscriptions, whereas this is not counted in the ITU figures.</p>
7.3. Number of Active mobile-broadband subscriptions per 100 inhabitants (2010)	105,982,212	[International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]