

Ideal Protection and Utilization of Personal Data toward Society 5.0

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Recommendation (body text)

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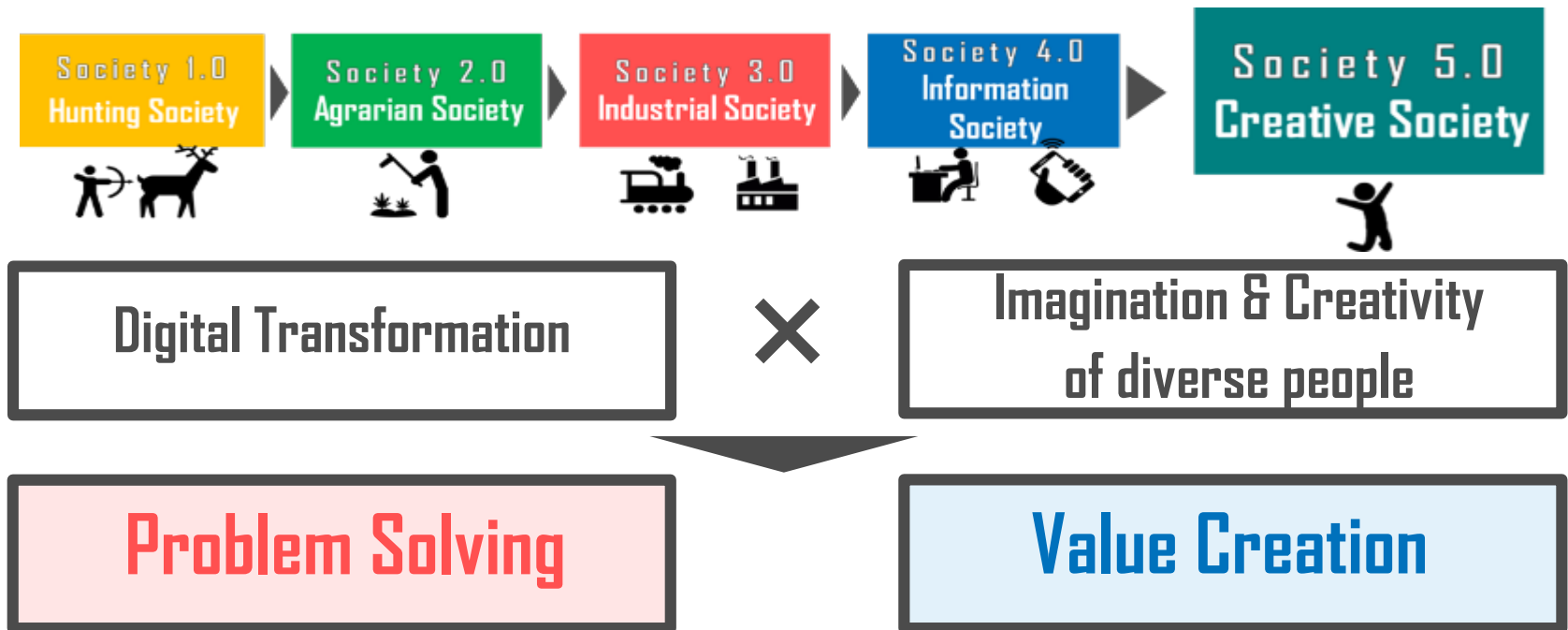
Management Manifesto on Proper Utilization of Personal Data

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I. Introduction

- ❑ Data utilization is the most important issue for constructing Society 5.0.
 - ❑ Personal data utilization in Japan has been advancing gradually thanks to development of the infrastructure for utilization of personal and other data following the enactment of the “Basic Act on the Advancement of Public and Private Sector Data Utilization” (Dec. 2016) and full implementation of the amended Act on the Protection of Personal Information (May 2017).
 - ❑ However, there are still many issues to be addressed, **including delays in establishment of infrastructure for collecting, linking data and problems of privacy violation and security breaches.**
- ⇒ **Here is our recommendation of the ideal protection and utilization of personal data that individuals can accept and trust.**

Society 5.0



1. Corporate Activities

- ✓ US and Chinese companies in the field of digital economy are providing innovative products and services using personal data.
- ✓ Japanese companies are gradually accelerating programs for utilizing personal data.
(Proper consent and acceptance of relevant individuals + Returning results back to relevant individuals and society)

<Three types of personal data utilization> (*) Refer to attachment for examples of some companies

[Type I] Utilize personal data with consent of relevant individuals and return results back to relevant individuals and society

[Type II] Solving social issues using statistic or anonymous personal data

[Type III] International programs involving transfer of personal data across the borders

2. Situations in Japan and Overseas

(1) Widespread concern on use of personal data

- ✓ Arising concern over privacy and cybersecurity issues among consumers
- ✓ People's attitude toward personal data utilization getting harsh

(2) Trend of international regulations

- ✓ Rampant data localization
- ✓ Regulations on digital platformers getting tightened in Europe
- ✓ The US studying laws for protection of personal data

(3) Programs of Japanese government

- ✓ Mutual approval of GDPR and Act on the Protection of Personal Information
- ✓ Review of Act on the Protection of Personal Information every three years
- ✓ Personal Data Trust Bank, etc.

3. Direction of Required Policies

- ✓ Domestically: Developing environment for utilization of personal data with acceptance and trust of individuals
- ✓ In relation to overseas: Establishing harmonized international system with data flowing across borders

III. Development and Enhancement of Domestic Systems

1. Building Infrastructure for Data Flows and Utilization

- ❑ As precondition of data utilization, it is necessary to develop the environment for business operators to collect required data.
- ❑ Programs such as open access to data, data linkage infrastructure, and personal data trust bank should be promoted under public-private partnership.
- ❑ Particularly, **the personal data trust bank is a project to enhance involvement of the relevant individuals for promotion of flows and utilization of personal data, and we strongly expect widespread use of the personal data trust bank as Japanese-style infrastructure for data flows and utilization.**

1) Open Access to Public Data

- ✓ Compile, with priority, public data into machine-readable, secondary usable format with open access.
- ✓ Expect that municipalities, supported by the central government, work on promotion of open access to public data that has not made much progress so far.

2) Establishment of Data Linkage Infrastructure

- ✓ Promote establishment of data linkage infrastructure in highly public fields including healthcare.
- ✓ Continue and enhance programs for motivating companies to share and link their data beyond the borders of corporations and industries.

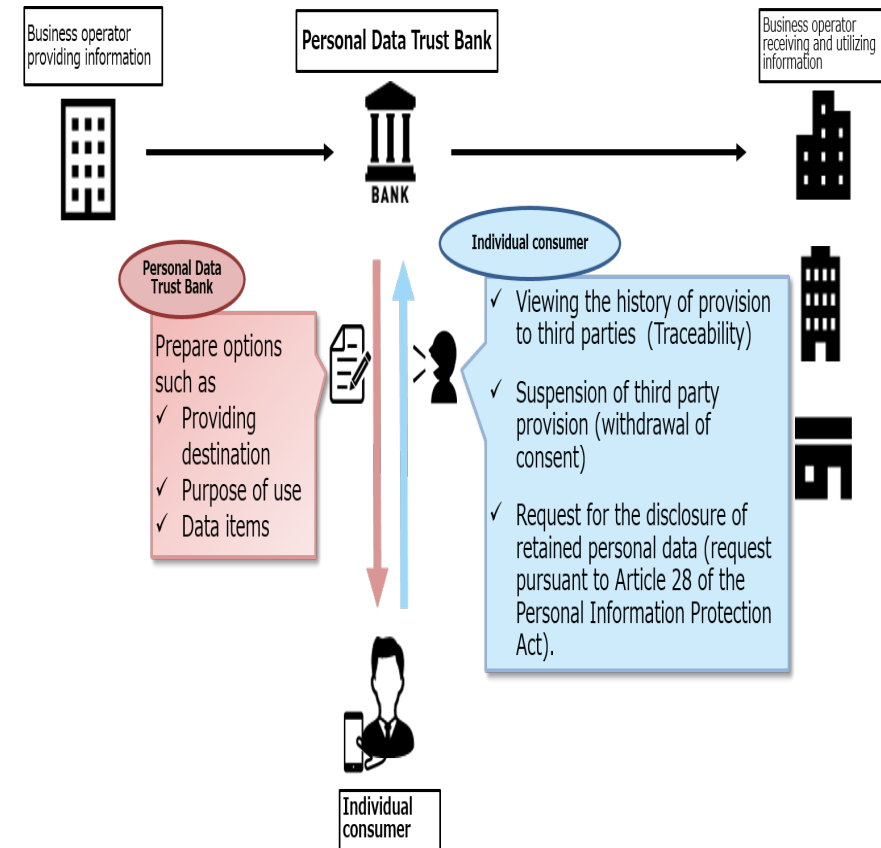
3) Personal Data Trust Bank

- ✓ Strongly expect that “special care-required personal information in healthcare and medical field” be included in the framework of personal data trust bank.
- ✓ In the review of the Guidelines of Certification Schemes, the discussion should be for more freedom for companies so that consumers have more choices.

4) Trust Service

- ✓ Expect that the trust service gets more widely in use, which is important infrastructure to ensure authenticity of the data or legitimacy of the person or organization when filing an electronic applications, carrying out electronic transactions or concluding electronic contracts in the private sector.

【Personal Data Trust Bank】



[Source] Material of Ministry of Internal Affairs and Communication

2. Ideal Personal Information Protection Legislation (1)

- ❑ In order to build a system so that companies can utilize the personal data with the acceptance and trust of the relevant individuals, **an approach is required that has laws and regulations, voluntary programs of the private sector, and mechanisms to motivate companies to use the personal data in a well-balanced manner.**

1) Personal Rights on Personal Information

[Data Portability]

- ✓ Should start studies with priority given to fields where needs are high, such as healthcare.

[Suspension of Use, etc.]

- ✓ In consideration of voluntary programs that are making progresses in the private sector, care should be taken so as not to place too heavy a burden on private operators.

2) Penalty

- ✓ Reinforced penalties could demotivate companies from utilizing personal data and should therefore be studied very carefully.

3) Reporting of Leakage

- ✓ In Japan, many companies are already responding appropriately, and it is not necessary to incorporate the obligation in the laws and regulations.
- ✓ Study carefully if the deadline is to be incorporated in the laws and regulations for reporting of the leakage.

4) Measures for Promotion of Data Utilization

[Promote Use of Anonymously Processed Information]

- ✓ Specific use cases and best practices to be disseminated proactively.

[Creation of Pseudonym Information]

- ✓ Study mechanisms for wide usage in consideration of specific needs

[Enhancement and Review of Guidelines]

- ✓ The guidelines to be enhanced and reviewed flexibly.

[Promote Voluntary Rulemaking of Private Sector]

- ✓ Rules on matters deeply related to business models, such as targeting advertisement and profiling, should mainly be prepared by the private sector.

[Rules Related Identifiers/Terminal Information including Cookies]

- ✓ No mandatory rules are required.

2. Ideal Personal Information Protection Legislation (2)

5) Unification of Personal Information Rules of Public and Private Sectors

- ✓ Having made the Personal Information Protection Commission responsible for integrated handling of all personal information in the private and public sectors, the handling of personal information by government agencies, incorporated administrative agencies, municipalities, and private operators should be unified.

[The Legislative Systems For Relevant Laws of the Act on the Protection of Personal Information]

The Constitution and jurisprudence

(Art.13 : Respect of Individuals, Art. 21 : The Secrecy of Communications,
Art. 35 : The Right to Be Secure in Home against Search and Seizure)

The Act on the Protection of Personal Information

(Chapter 1 ~ 3 : Overall Vision, Responsibilities of the Central and Local Governments • Measures etc. to Protect Personal Information, etc.)

Basic policy on the Protection of Personal Information

The Act on the Protection of Personal Information

(Chapter 4~7 : Obligations of a Personal Information Handling Business Operator, Penal Provisions etc.)

Target: Business operators in the private sector

Guidelines etc. (※)

Q&A

< Private Sector >

The Act on the Protection of Personal Information Held by Administrative Organs

Administrative organs of the central government

Act on the Protection of Personal Information Held by Independent Administrative Agencies

Independent administrative agencies, etc.

Personal Information Protection Ordinance

Local governments

< Public Sector >

2. Ideal Personal Information Protection Legislation (3)

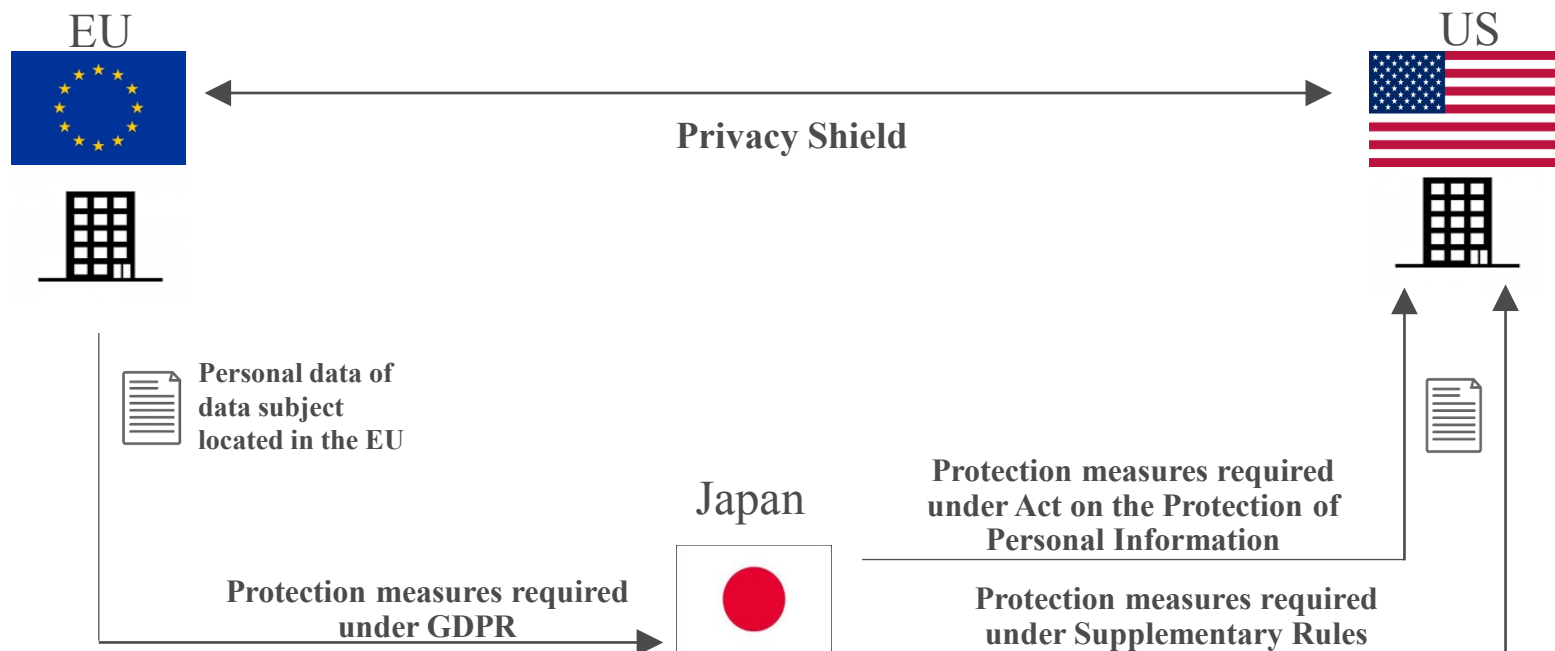
6) Ensure Smooth Transfer of Personal Data across Borders

[Provision of Personal Data to a Third Party Located outside Japan]

- ✓ Legal requirements to be added for allowing provision of personal data to a third party outside Japan, for smooth transfer of personal data to overseas.

[Non-application of Supplementary Rules]

- ✓ The Japanese government should negotiate with the EU so that re-transfer of the personal data, which a Japanese business operator transferred from the EU, to the US should be outside the scope of the “Supplementary Rules” if the business operator in the US is certified under the Privacy Shield. (See diagram below.)

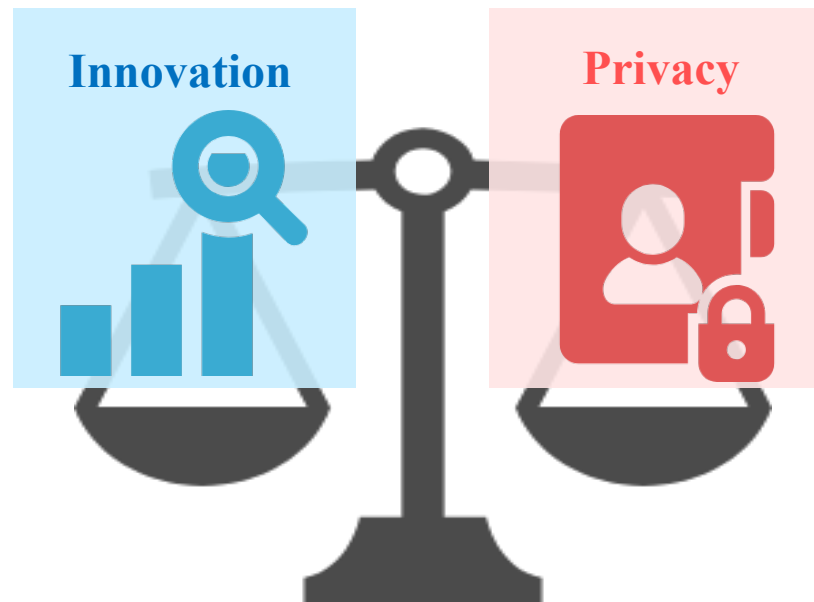


3. Rules on Digital Platform Operators (1)

- ❑ Digital platform operators are important partners for open innovations.
- ⇒ **Too rigorous regulations mainly intended for digital platform operators could stall innovations in the entire digital fields.**

1) Basic Concept

- ✓ Existing laws and regulations to be applied to all the Japanese and overseas companies operating in similar business areas.
- ✓ If the domestic laws cannot appropriately be applied or executed to overseas companies operating in similar business areas, it is necessary to revise the applicable scope of the laws.
- ✓ In studying new laws and regulations, a mechanism should be sought after that well balances the privacy protection and innovation promotion.



3. Rules on Digital Platform Operators (2)

2) Protection of Secrecy

- ✓ The laws and regulations for protecting communication privacy should be applied equally to all the operators providing services to users in Japan.
- ✓ Application of the laws and regulations for protecting communication privacy to M2M communications, cookies and other identifiers and terminal information should be studied carefully.

3) Operating Guideline of Antimonopoly Act

- ✓ It is essential to define the “digital platformer” more clearly.
- ✓ The “superior bargaining position” should be defined in a limited way.
- ✓ It is necessary to clearly show requirements for acts to be regarded as abuse of superior bargaining position, after carefully considering relationship with other laws.
- ✓ The necessity should be clearly shown that acts regulated under the Act on the Protection of Personal Information be also regulated under the Antimonopoly Act.

(*) Based on the “Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act on the Transactions between Digital Platformer Operators and Consumers that Provide Personal Information, etc. (draft)” as released by the Fair Trade Commission.

1. Securing Data Flows across Borders

- ✓ Free data flows across national borders are essential for development of the digital economy.

2. Abolition of Data Localization Regulations

- ✓ Proliferation of data localization regulations around the world could seriously jeopardize development of the digital economy globally.
- ✓ Japan should, in cooperation with the US and other countries sharing the value of cross-border data flows, should strive to have data localization regulations eased or abolished and to limit the spread of the regulations to emerging counties.

3. Building International Framework for Ensuring Data Flows across Borders

- ✓ Japan should bridge the EU and APEC nations to encourage both to accept mutual certification under GDPR and CBPR.
- ✓ Progress in development of rules for such fields as data flows is expected at “Osaka Track.”
- ✓ In building the international framework, it is necessary to sort out what data are to be subject to cross-border flows and what data are not.

4. Encouraging Harmonization of Systems among Nations

- ✓ In the EU, it is being discussed to tighten the regulations in the digital area, including approval of the Directive on copyright in the digital single market (March 2019) and study of e-privacy rules, which could cripple development of the digital economy globally.
- ✓ In the US, some states are studying or introducing personal data protection laws and regulations on their own. Consistent rules on the federal level are expected. In the discussion for enhancement of personal data protection laws and regulations that is advancing on the federal level, it is desirable that the concept of free cross-border flows of personal data to be maintained firmly.
- ✓ The Japanese government should listen to the opinions of Japanese companies operating in the EU or in the US and encourage EU and US governments to work to establish the well-balanced system.

Issues of privacy and cybersecurity have been emerging, and companies wishing to utilize the personal data are facing difficulties in Japan.

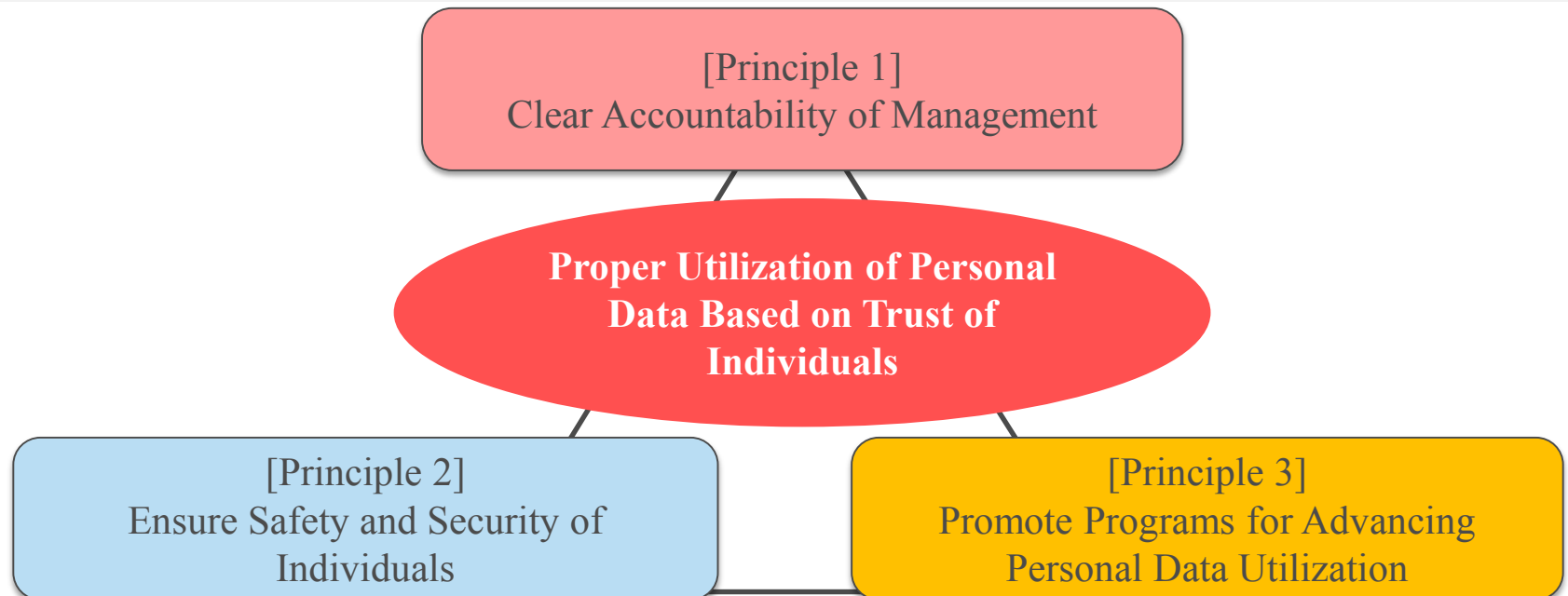
However, in order to create Society 5.0 that would be built in a human-centered fashion by solving various social issues using the digital technologies and data, utilization of the personal data is an indispensable element.

It is imperative to present various showcases of companies, under the leadership of the management, creating innovative services and enhancing the quality of people's life by solving social issues and improving convenience through utilization of personal data.

At the same time, it is essential that companies proactively disclose and explain that they are providing services with due attention paid to the privacy and cybersecurity, and participate in preparation of the voluntary rules necessary to carry out their businesses to have the approval of the consumers.

**=> Keidanren has prepared Management Manifesto
on Proper Utilization of Personal Data**

- ❑ **In order to create Society 5.0 that seeks to build a human-centered society** by solving various social issues, **promoting personal data utilization is indispensable based on trust of the relevant individuals.**
 - ❑ However, because of incidents of violation of personal interests and rights and cybersecurity breaches in Japan and overseas, **the society is getting less and less tolerant to utilization of personal data.**
- ▼
- ❑ The management must **recognize** that protection of personal data and implementation of cybersecurity measures **contribute** not only to curtailment of business risks **but also to creation of corporate value on a medium- to long-term basis by fostering the sense of safety and security of individuals, and must take initiatives voluntarily for utilization of the personal data that incorporate these measures in advance.**
 - ❑ Keidanren hereby declares that the economic community will abide by the three principles for proper use of personal data.



(Principle 1) Clear Accountability of Management

- The management recognizes that utilization of personal data is one of the most important management issues, makes management decisions from a long-term perspective with international considerations also taken into account, and provides in-depth explanations to both internal and external persons concerned.
- The management develops the internal system for coordination of the development, sales, and compliance divisions so that important business decisions involving utilization of personal data are made appropriately.
- The management promotes digital transformation for utilization of personal data. In addition to promoting development of the digital environment such as AI, IoT, and cloud migration, the management strives to strategically foster and win human resources in the digital areas, give them the required authority, and evaluate them appropriately in accordance with their achievements.

(Principle 2) Ensure Safety and Security of Individuals

- The management develops the protection and management system for the personal information in accordance with the personal information protection laws and regulations, formulates and discloses a simple and transparent privacy policy that stipulates objectives of use and provision of the personal information as well as personal information security and control measures, and promotes protection and utilization of the personal data with the acceptance of the individuals.
- The management implements measures, throughout the supply chain, for ensuring safety and security of individuals from the stages of planning and designing of the services and products including personal data protection and cybersecurity measures, and proactively discloses and explains these measures.
- The management makes due arrangements and provisions in advance for prevention of personal data leakage. In case of such leakage, the management explains sincerely to all the parties concerned.

(Principle 3) Promote Programs for Advancing Personal Data Utilization

- The management identifies areas for cooperation that is beneficial to all the partners beyond the borders of companies and industries and promotes establishment of data linkage infrastructure, etc.
- The management strives to create innovative products and services utilizing personal data, to explain to the public in an easy-to-understand manner how the products and services enrich people's life and contribute to the benefits of the individuals, and to foster social understanding for utilization of personal data.
- The management makes efforts to participate in preparation of rules for utilization of profiling technologies, credit scoring and targeting advertisement, for dispelling public concerns.