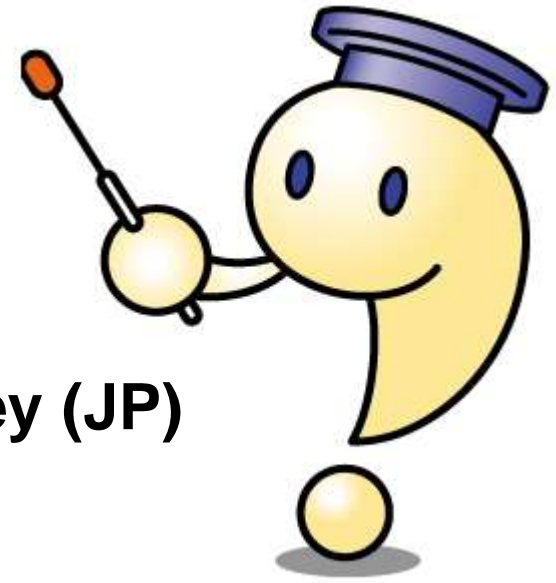




Attorneys Act and AI Legal Service

Yuichiro Suzuki
Attorney at Law (JP, CA), Patent Attorney (JP)
Japan Patent Attorneys Association
International Activities Center



Introduction

- On August 1, 2023, the Ministry of Justice (the “MOJ”) issued guidelines on the use of AI for contract drafting and review services, defining what actions could be considered violations of the Attorneys Act and what actions are unlikely to be.
- Several Japanese companies offer contract drafting and review services using AI. Whether or not such services violate the Attorneys Act will have a significant impact on whether or not legal tech will develop in Japan in the future.
- This can be a reference for IP-related AI regulations in Japan.

Article 72 of the Attorneys Act

- Article 72 of the Attorneys Act in Japan prohibits non-attorneys from providing legal services and receiving fees, which carries a penalty of up to two years' imprisonment or a fine of up to 3 million JPY.

Article 72 of the Attorneys Act

- Article 72 reads as follows: *No person other than **an attorney or a Legal Professional Corporation** may, for the purpose of obtaining compensation, engage in the business of providing legal advice or representation, handling arbitration matters, aiding in conciliation, or **providing other legal services** in connection with **any lawsuits, non-contentious cases, or objections, requesting for re-examination, appeals and other petitions against administrative agencies, etc., or other general legal services**, or acting as an intermediary in such matters; provided, however, that the foregoing shall not apply if otherwise specified in this Act or other laws.*

2022 MOJ's reply under the System to Remove Gray Zone

- The Act on Strengthening Industrial Competitiveness provides a “System to Remove Gray Zone” to obtain a written opinion from a regulatory agency.
- Someone used this system to ask the MOJ whether an AI contract review service is legal. In response, the MOJ indicated that contract services using AI may be in violation of the Attorneys Act, depending on their content.
- As a result, companies that already provide such services asked the Ministry to clarify the legal scope within which they could operate.
- Such companies argued that their activities should be legal as they do not produce legal analysis like lawyers do.

2022 MOJ's reply under the System to Remove Gray Zone

- Please note that the reply (opinion) issued under this System is in no way legally binding. In addition, it is only intended to provide guidance on the individual business plan being submitted and does not affect the business plans of other companies.
- In this case, someone (an anonymous company) requested the MOJ's opinion on its individual legal tech business plan, and the MOJ's response was misconstrued to have broad implications for the legal tech services industry.
- This led to the establishment of formal guidelines by the MOJ.

2023 Official Guideline

- Because of the confusion in 2022, new guidelines were established.
- The guidelines state that decisions on the legality of any action “will ultimately be left to the courts,” and then list cases where there is a risk of violating the law, and cases that are considered legal.
- The guidelines state that it is **not** illegal for such services to be used by attorneys. (The issue of legality arises primarily where such services are **used by non-lawyer employees** within a Japanese company.)

2023 Official Guideline

- Two examples of cases that may be in violation of the law are engaging in the following acts while charging fees:
 - Legally considering individual circumstances, such as details leading to a contract, and then preparing a contract that **reflects the details or presenting a draft amendment**; or
 - Indicating the **degree of legal risk** of a contract by considering individual circumstances.

2023 Official Guideline

- On the other hand, the following two actions are considered legal:
 - Creating a contract by **selecting a relevant boilerplate contract** from several such documents; or
 - Exercising caution by pointing out differences between the terms of a contract under review and a boilerplate contract, by providing **general explanations or legal precedents about the terms**.

2023 Official Guideline

- According to the government, at least several thousand companies already use such existing services.
- The ministry said it was not currently aware of any services that clearly violate the Attorneys Act.
- Although the new guideline is for the review and creation of contracts, similar criteria would apply to IP-related AIs.
- This guideline does not address issues related to the protection of personal information or trade secrets.



Thank you!



Yuichiro Suzuki

Attorney at Law (JP, CA), Patent Attorney (JP)
yuichiro.suzuki@kubota-law.com