U.S.-Japan Internet Economy Private Working Group Joint Statement 2016

The American Chamber of Commerce in Japan

Keidanren

February 25, 2016

Introduction

We are now 15 years into what began as the "Millennium," and the expectation that the Internet economy would become an engine for growth in the twenty-first century has not only met those expectations, but greatly exceeded them. Talented technicians and businesspeople have created Internet-based services and applications that have led to the creation and development of new industries and businesses. Those services and applications have become necessities of life for people around the world and are now established as part of the new infrastructure supporting twenty-first century life.

The Internet makes it possible for data to flow freely across borders, and the development of cloud technology and the rapid spread of mobile devices mean that the online world is not neatly governed by the regulations and legislation of a single country or region. Because of this, harmonizing regulatory and legislative systems is a major challenge that needs to be addressed on a global basis to achieve worldwide growth through the Internet economy. In this context, the recent agreement reached by negotiating parties, including the United States and Japan, to promote the free cross-border data flow of information (including personal data) across national borders by electronic means as part of the Trans-Pacific Partnership (TPP), is highly significant.

The U.S. and Japanese economies are evolving away from the pattern of dependence and friction that we saw in the twentieth century toward a mutually complementary relationship that makes the most of the strengths of each country. It is no exaggeration to say that a relationship that allows the two countries to cooperate and contribute to the development of the world economy together is essential for worldwide economic stability. Recognizing the importance of the U.S.-Japan relationship, we submit this joint statement to coincide with the seventh meeting of the U.S.-Japan Policy Cooperation Dialogue on

the Internet Economy, in anticipation of working together to address new challenges in the future.

Part I: Balancing Protection and Utilization of Personal Information

In Japan, the amended Act on the Protection of Personal Information was enacted on September 3 last year and officially promulgated on September 9. With the creation of a new Personal Information Protection Commission (PIPC) and the introduction of new rules with respect to the global applicability of the new law, there is considerable concern in the private sector with regard to the implementation of the new law once it comes into effect. This is especially true with respect to areas such as user consent, record compliance requirements and possible extraterritorial application of the law, since areas in the new law still do not clarify the specific obligations and responsibilities that will be decided later by Cabinet order or rules issued by the PIPC.

At the same time, the Draft General Data Protection Regulation that passed the European Parliament is now in the final stages of deliberation after an agreement was reached in a three-way discussion (trilogue) involving the European Commission, European Parliament and the Council of the European Union. This legislation includes practical rules for extraterritorial application and cross-border transfer of data. This will inevitably result in additional material changes to the U.S.-EU Safe Harbor Agreement framework and the change in European policies will have a wide impact on businesses and consumers around the world. Unless a clear new framework is put in place in a timely manner, the lack of regulatory certainty will have a negative impact on business activities. As such, we hope for a speedy resolution to the current situation.

Since only the United States, Japan, Canada and Mexico are adopting the APEC Cross Border Privacy Rules (CBPR) certification system, we expect both the U.S. and the Japanese governments to encourage other APEC economies to adopt this policy framework for data flows and data protections[1].

[1] In addition, there is a need for steps to put in place a business environment that realistically harmonizes the various different policy frameworks that exist for protecting personal information, including the double approval procedures required for Cross Border Privacy Rules (CBPR) and the European binding corporate rules (BCRs), international standards such as ISO/IEC, and the use of voluntary private sector

To address these issues, there is a need for a solid bi-lateral axis of cooperation to provide direction for policy on data flows in an increasingly complex international context. For this reason, there needs to be a clear demonstration of intent by the United States and Japan to move forward with efforts to harmonize the domestic legal systems of both countries. We ask the Japanese government to confirm that the United States will be regarded as one of the representative countries having data protection legislation offering equivalent levels of protection to Japan's as defined in Article 24 of the amended Act on the Protection of Personal Information.[2]

We also hope that, with respect to data use, Japanese companies will continue to receive the same treatment as U.S. companies within the U.S. legal system as in the past.

We look to the governments of both countries to incorporate the opinions of industry and other multiple stakeholders in order to guarantee maximum transparency in the implementation of laws on personal information.

Part II: Data Localization and Cross-Border Data Flows

Along with the developments outlined above, moves are underway in many countries around the world, including emerging countries, to create new regulations and controls on the international flow of data.[3] This is having a major impact on the growth of markets through international harmonization among telecommunications providers, the software industry, cloud data service companies, and systems integrators. The situation is increasingly complex and it seems likely that the outlook will continue to be a challenging one for international companies in the years to come.

In this context, we welcome the fact that the parties to the TPP negotiations including the

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regulations.

[2] Summary of Article 24 of the amended Act on the Protection of Personal Information: In a case when a business operator handling personal information provides personal information to a third party in a foreign country, it must obtain prior consent of the individual involved. An exception may be made for countries that possess a personal information protection system offering equivalent levels of protection to Japan's, and for those that possess a system conforming to the standards of the Personal Information Protection Commission.

[3] There have been numerous movements to tighten state regulation of the Internet, that deviate from market principles and force the transfer of technology and intellectual property.

United States and Japan have allowed for the free transfer of information (including personal information) across borders by electronic means in the chapter on electronic commerce, as well as forbidden parties from requiring companies and other entities to place computing facilities within a country as a condition of carrying out business there.

Numerous economists and academics have shown that placing restrictions on the flow and utilization of data can hinder the development of private companies and stifle the economic development of the country implementing the restrictions. For example, such restrictions can create a situation in which that country's companies are prevented from using cloud services at a relatively cheaper price, pushing up their costs and excluding them from the global supply chain.[4] Other studies have shown that the introduction of restrictions on the flow and utilization of data would lead to a drop in domestic GDP in a number of countries: 1.7 percent down in Vietnam, 1.1 percent down in China, the 28 countries of the European Union, and South Korea, and 0.8 percent down in Brazil and India.[5]

Meanwhile, the free flow and utilization of data are already proving to be a source of real innovation in the business world. For example, attempts are underway in healthcare to share data on individuals' health management, medical treatment and nursing care among concerned parties for the purposes of statistical analysis as well as personalized health guidance and advice. On a society level such efforts can help to reduce health insurance costs and invigorate production, consumption and other economic activities, while on a personal level there is hope that such efforts will help to extend healthy life expectancy and will help people to live more fulfilled lives and remain economically active for longer.[6] There are good prospects for potential uses in other areas, including initiatives to use information on individual behavior in town development and to encourage tourism, and to use statistical data on driving in setting automobile insurance rates, ascertaining traffic conditions, and easing congestion. (See the attachment "Examples of Solutions to Social Issues Using Personal Information".)

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[4] One example is Information Technology & Innovation Foundation, *Localization Barriers to Trade*, available at http://www2.itif.org/2013-localization-barriers-to-trade.pdf

[5] ECPIE, *The Costs of Data Localisation*, available at http://www.ecipe.org/app/uploads/2014/12/OCC32014__1.pdf

[6] See the attached materials for other specific examples.

As well as advocating clearly on behalf of maintaining the free flow of data including personal information as a prerequisite to creating innovation, the U.S. and Japanese governments should work together to urge countries imposing restrictions that disrupt the proper balance between protection and utilization of personal information to relax or do away with those restrictions.[7]

Part III: Cybersecurity as the Foundation of the Internet Economy

With the damage caused by cyber-attacks increasing throughout the world, for the advancement of the global economy it is essential to maintain a safe cyber environment and to guarantee the free flow of information internationally.

The agents behind cyber-attacks are active globally and with increasing numbers of attacks being carried out by international terrorist/criminal organizations, international collaboration and cooperation are essential to address this challenge. Although it may not always be possible for governments to reveal to the private sector all the information they have acquired on responses to attacks that have taken place in another country, it is vital that governments release as much up-to-date information as possible to allow companies to prepare responses to advanced attacks.

To secure the free international flow of information in cyberspace, the U.S. and Japanese governments need to take the lead in the international debate on cybersecurity and should work to promote collaboration and cooperation between the two countries' governments and private sectors. To this end, building on a foundation of mutual trust in the security spheres[8], the two countries should work toward productive discussions in the Policy Cooperation Dialogue on the Internet Economy and the Cyber Dialogue, and strengthen their relationship through personnel exchanges in government and the private sector, joint training and shared development of technology. It is important to establish a framework in order to share incident information and best practices.

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[7] The need for international rules to guarantee the free flow and utilization of data is also emphasized in the paper submitted by the E15 Initiative, which brings together over 300 experts on the global economy, to the Davos Conference 2016, and we look to the U.S. and Japanese governments to play an active role in addressing this issue.

[8] Promotion of cooperation on cyber-defense was included for the first time in the amended version of the Guidelines for U.S.-Japan Defense Cooperation agreed by the Japanese and U.S. governments in April 2015.

In 2020, the Olympic and Paralympic Games will be held in Tokyo. Ensuring that the games are a success despite the growing threat from cyber terrorism will be a litmus test for the many major international events that both countries hope to host in the future. It is to be hoped that not just the Japanese government and industry but also the U.S. government and industry will collaborate and cooperate in preparing to deal with the ever-increasing threat of cyber-attacks.

Part IV: Responding to the Debate on Internet Governance

In 2015, there was an ongoing debate about the transition of functions of the Internet Assigned Numbers Authority (IANA), as the contract with the Internet Corporation for Assigned Names and Numbers (ICANN) entered its automatic extension period. Numerous meetings were held, including the International Telecommunication Union (ITU), the World Summit on the Information Society (WSIS), the Global Conference on Cyber Space in The Hague (GCCS), the NetMundial Initiative Coordination Council, as well as the Internet Governance Forum (IGF) in Brazil, and the High Level Meeting of the United Nations General Assembly on WSIS+10. With regard to the outcome document in particular, the industrial sectors of the United States and Japan welcome the document's evaluation of the state of the Internet over ten years (breaking down the digital divide and other issues), the decision to extend the mandate of the IGF for ten years, to continue dialogue for enhanced cooperation, and to maintain a multi-stakeholder system.

However, arguments were also put forward by countries that did not agree with these trends, and movements are being made toward greater restrictions on data flow and data use in many countries. The past year made clear that, while discussions continue about data flow and data protection as noted at Part II, at the same time a number of countries and regions want to impose protectionist policies on the communication layer, which supports operation and management of the Internet.

In this context, the U.S. and Japanese governments must take the lead as representative participants in the negotiations over international rules, emphasizing the importance of maintaining free international data flows and the benefits that accrue from it. This is crucial to prevent a further trend toward excessive protectionism in the data regulations of third countries. It will also be necessary to lead the direction of the debate on Internet

governance with countries that share the same approach, building a shared understanding that minimizing state interference in the Internet economy is essential to the development of a country's economy.

We also hope that moves will be made to strengthen the domestic and bilateral systems in the United States and Japan, making visible the connections among the various debates on Internet governance involving different actors, and that the two countries will be able to respond to these forums based on a common policy built on a map of the issues involved that is shared by policy makers, the governments and private sectors in both countries.

In Conclusion: Toward a More Complete Internet Policy

As outlined above, our joint statement this year is based on an understanding that maintaining international free flow of data is essential for the Internet economy to continue to play a key role as a driver of further growth in the world economy. To this end, we have discussed steps to bring about consistency among different countries' regulations on cross-border data transfers, the need to avoid excessively restrictive protectionist legislation, the importance of cybersecurity, and the need to limit excessive state interference in Internet governance.

Innovations in the field of information communication technology (the Internet of Things and other innovations) have made it possible to bring creative ideas to reality. It is likely that we will see further fusion between the Internet and industries in various fields in the future, leading to newer and higher-level business possibilities. At the same time, it is vital to move ahead with efforts to harmonize legal systems and standardize technology, to ensure that these do not undercut the benefits arising from the utilization of new services and applications not envisaged by existing legal systems.

For globally active businesses in both countries, cross-border data transfer is a precondition for creating innovation, and the industrial sectors of both countries call for governments to resolutely defend the ideal of an open and transparent Internet and work toward greater consistency and interoperability of international rules based on the peaceful use of cyberspace. Data is an essential resource within the Internet economy.

The challenge is to ensure that the twin aims of protecting and utilizing personal data coexist. We hope that countries will work to promote the greater use of data within their borders as well. We believe, in any country where government interference in the Internet is excessive and the flow and use of this resource is impeded, it is unlikely that such country will enjoy the full benefits of economic development and inclusive economic growth.

The G7 Ministerial Meeting on information and communications technology that will be held in Japan in April this year is the first such meeting in 20 years. Government and industry in the United States and Japan should work together to use this meeting as an opportunity for debate that will help to build a consensus among countries that share an awareness of the importance of developing the world economy through the Internet economy on the need for an international data utilization environment conducive to economic development. The outcomes of such debate will surely pave the way for discussions at the Organization for Economic Co-operation and Development's Ministerial Meeting on the Digital Economy planned for June this year.

The industrial sectors in the United States and Japan wish to deepen the partnership in the future, and look forward to opportunities to discuss a platform for further developing the digital economy as the next stage in the TPP. In this context, we will look to play an active role in making the Tokyo Olympic and Paralympic Games in four years' time a showcase for the Internet economy of the future.[9]

We strongly hope that the U.S. and Japanese governments will continue to take the lead internationally in putting together a framework for a free and healthy Internet economy.

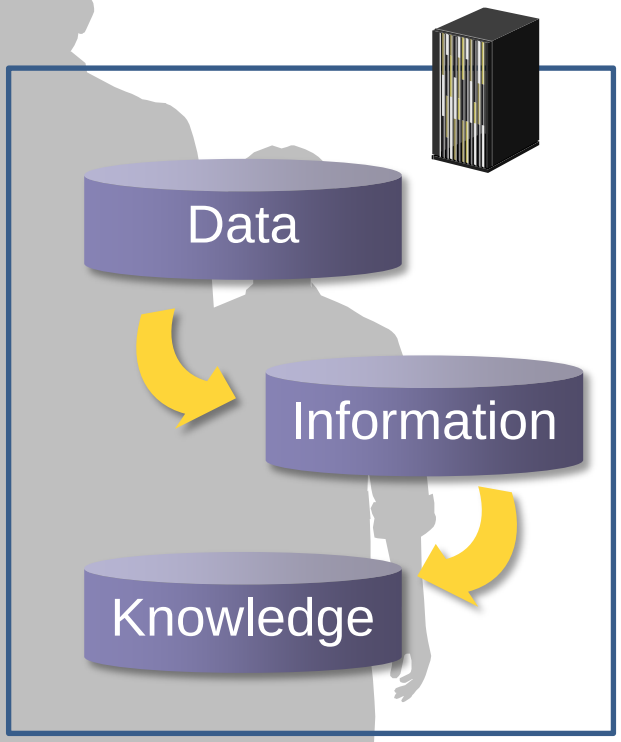
[9] For example, we aim to showcase successes in the following areas: creating a supportive environment for the deployment of new services, supporting efforts to increase the availability and legitimate use of various content and content services, and strengthening domestic IT capacity.

Utilization of Statistical Data on Healthcare and Personalized Health Guidance and Advice

Outline: Share data on individuals' health management, medical treatment and nursing care among concerned parties for the purposes of statistical analysis as well as personalized health guidance and advice.

Health checkups, past illnesses, medication records and reference information, etc.

Living improvements of patients with chronic diseases, and efficient utilization of medical resources, etc.

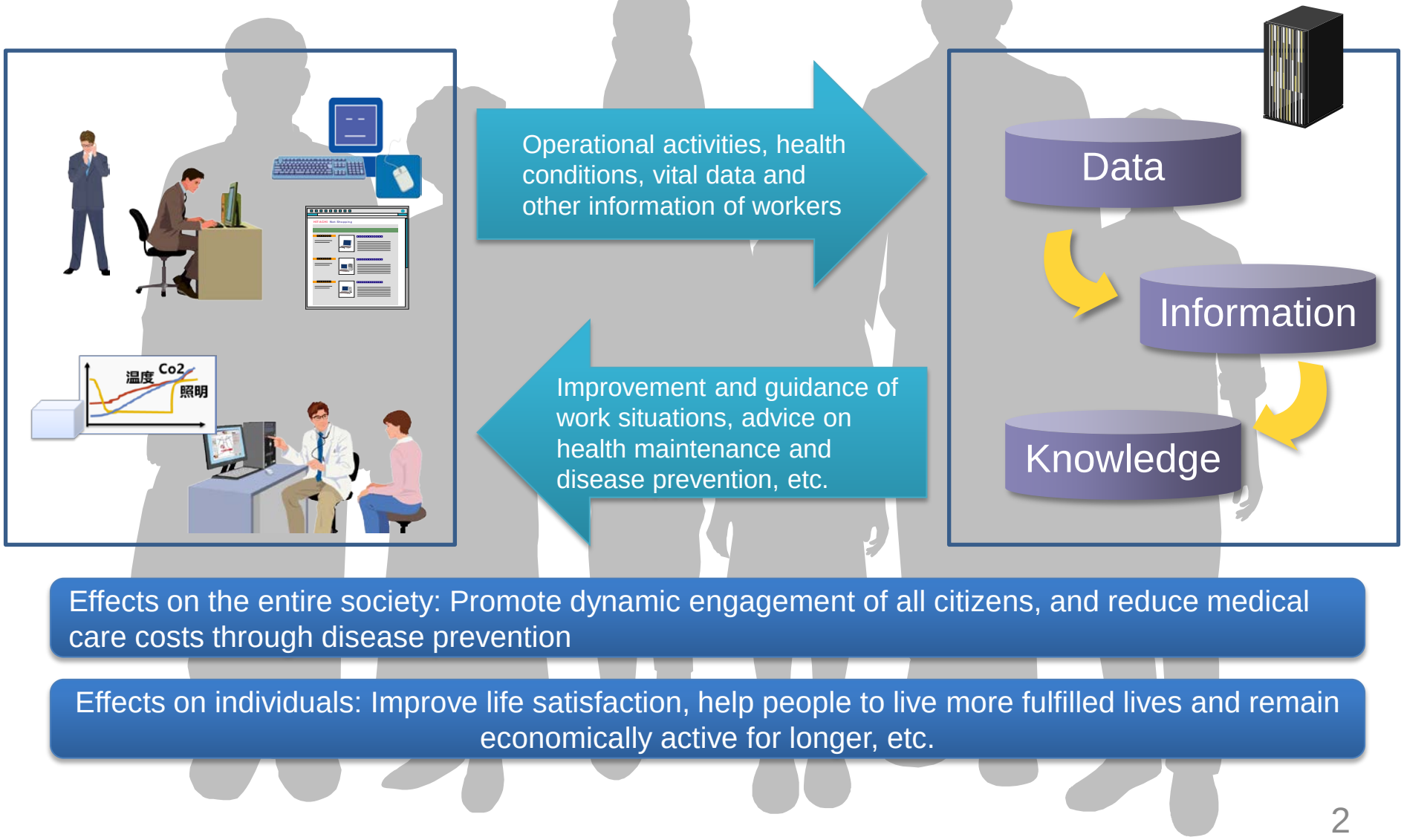


Effects on the entire society: Reduce social welfare spending and invigorate production, consumption, and other economic activities

Effects on individuals: Extend healthy life expectancy, help people to live more fulfilled lives and remain economically active for longer, etc.

Utilization of Statistical Data on Wellness of Workers to Improve Their Work Situations

Outline: Share statistical data on activity conditions and health conditions of workers engaged in various occupations to improve work situations of relevant industries more objectively and provide personalized guidance and advice.

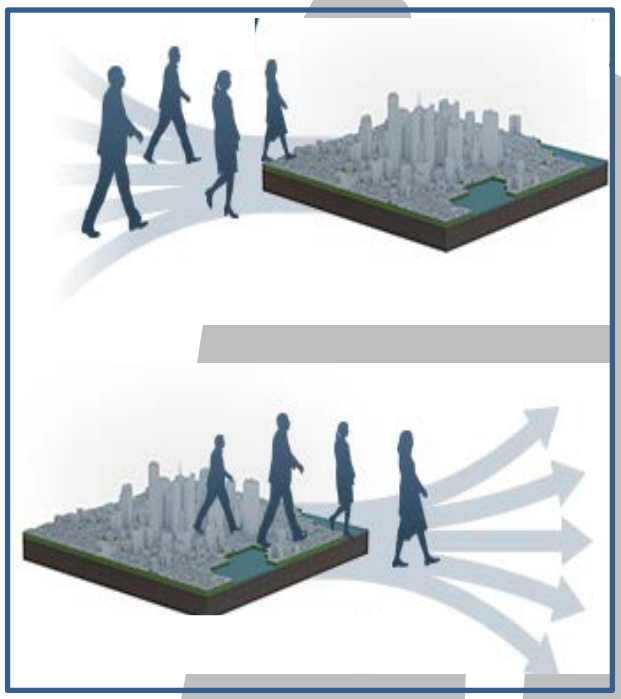


Effects on the entire society: Promote dynamic engagement of all citizens, and reduce medical care costs through disease prevention

Effects on individuals: Improve life satisfaction, help people to live more fulfilled lives and remain economically active for longer, etc.

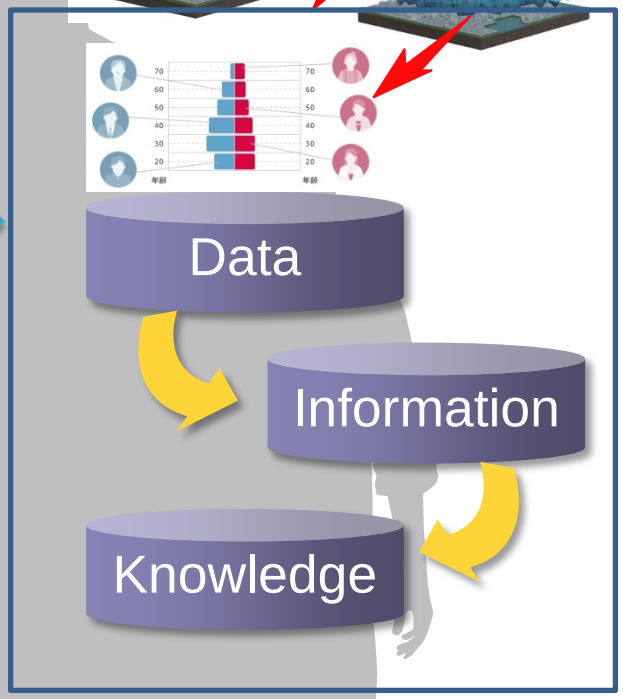
Utilization of Individual Behavior Trends to Promote Town Development and Encourage Tourism, Etc.

Outline: Collect statistical data on individuals' various behavior trends and use the analysis results of the data to promote town development and encourage tourism, etc.



Population distribution by time zone
Ratio by gender and age group
Ratio by place of residence
Ratio of foreign nationals, etc.

Investigation of measures including events in accordance with age and gender, investigation of urban district development plans, etc.



Effects on the entire society: Refine disaster prevention plans, further invigorate local communities and sophisticate town development

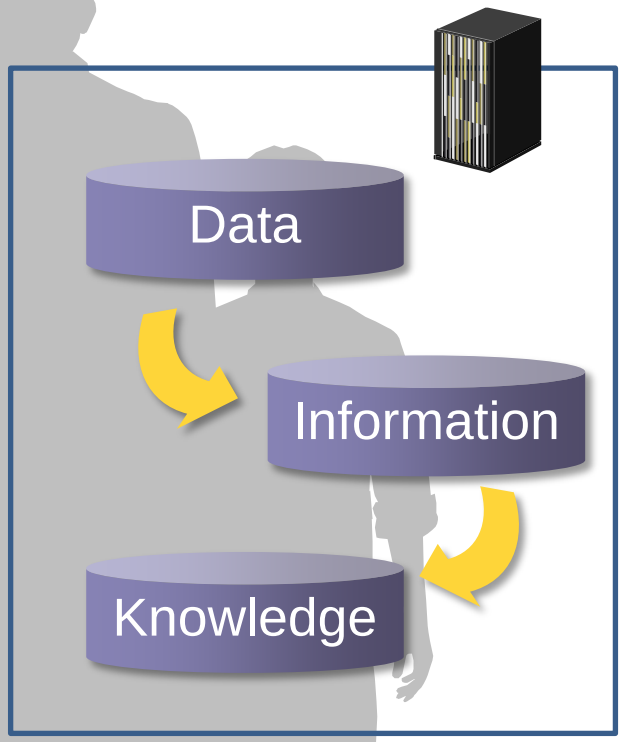
Effects on individuals: Increase satisfaction through enhanced convenience and other advantages in residing areas, etc.

Utilization of Statistical Data on Driving and Using it in Setting Automobile Insurance Rates

Outline: Collect data on individuals' driving situations (sudden acceleration, sudden braking and steering wheel manipulation) to help avoid accidents and ease traffic congestion.

Driving situations (sudden acceleration, sudden braking and steering wheel manipulation), location information and weather conditions, etc.

Utilization for setting automobile insurance rates, provision of advice on driving, etc.



Effects on the entire society: Ascertain traffic conditions that may cause accidents and ease congestion

Effects on individuals: Refund automobile insurance rates, reduce traffic accident rates, etc.