

# Japan

	2016	2017		
<b>Internet Freedom Status</b>	Free	Free	<b>Population:</b>	127 million
Obstacles to Access (0-25)	4	4	<b>Internet Penetration 2016 (ITU):</b>	92 percent
Limits on Content (0-35)	7	7	<b>Social Media/ICT Apps Blocked:</b>	No
Violations of User Rights (0-40)	11	12	<b>Political/Social Content Blocked:</b>	No
<b>TOTAL* (0-100)</b>	<b>22</b>	<b>23</b>	<b>Bloggers/ICT Users Arrested:</b>	No
			<b>Press Freedom 2017 Status:</b>	Free

\* 0=most free, 100=least free

## Key Developments: June 2016 – May 2017

- Leaked documents revealed Japanese intelligence agencies obtained mass surveillance equipment from the U.S. National Security Agency in 2013 (see **Surveillance, Privacy, and Anonymity**).
- Authorities struggled to manage online abuse targeting people of overseas origin; a law was introduced in mid-2016 encouraging public education, but some local authorities asked for better definitions of the term “hate speech” and stronger tools to combat the trend (**Media, Diversity, and Content Manipulation**).
- The Supreme Court issued a positive ruling regarding the removal of content in the public interest in cases where individuals assert their “right to be forgotten” (see **Content Removal**).

## Introduction

Internet freedom declined slightly in Japan due to a deteriorating surveillance environment.

There are few obstacles to access, and internet penetration is over 90 percent. Japan's constitution protects all forms of speech and prohibits censorship. However, some legislation disproportionately penalizes specific online activities. New information about the communications surveillance equipment available to Japanese intelligence agencies was revealed during the reporting period. It's not clear if the equipment could be used on domestic surveillance targets under Japan's wiretap framework. But the news came during a reporting period that also saw clear indications of law enforcement powers expanding on security grounds. The Supreme Court failed to challenge the police practice of monitoring anyone in the Muslim community for possible links to terrorism, and June 2017 saw the passage of a conspiracy law that may allow police to seek wiretap warrants to investigate more crimes with supposed links to terrorism.

The conspiracy law is the latest step to boost national security under the administration of Prime Minister Shinzo Abe. Lawmakers passed state secrets legislation in 2013, which criminalized both leaking and publishing broadly defined national secrets regardless of intent or content. In a review of Japan's human rights practices in July 2014, the United Nations Human Rights Committee said the legislation laid out "a vague and broad definition of the matters that can be classified as secret" and "high criminal penalties that could generate a chilling effect on the activities of journalists and human rights defenders."<sup>1</sup> In June 2017, the U.N. special rapporteur on freedom of expression also noted "significant worrying signals" about Japan's record on freedom of expression.

## Obstacles to Access

*In general, Japanese internet users experience few obstacles to access. There are high rates of internet penetration, and smartphone use is increasing. Wi-Fi and mobile options are expanding in advance of the 2020 Tokyo Olympics.*

## Availability and Ease of Access

Key Access Indicators		
Internet penetration (ITU) <sup>a</sup>	2016	92.0%
	2015	93.3%
	2011	79.1%
Mobile penetration (ITU) <sup>b</sup>	2016	130%
	2015	125%
	2011	104%
Average connection speeds (Akamai) <sup>c</sup>	2017(Q1)	20.2 Mbps
	2016(Q1)	18.2 Mbps

<sup>a</sup> International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2016," <http://bit.ly/1cblxxY>.

<sup>b</sup> International Telecommunication Union, "Mobile-Cellular Telephone Subscriptions, 2000-2016," <http://bit.ly/1cblxxY>.

<sup>c</sup> Akamai, "State of the Internet - Connectivity Report, Q1 2017," <https://goo.gl/TQH7L7>.

<sup>1</sup> United Nations International Covenant on Civil and Political Rights Human Rights Committee, "Concluding observations on the sixth periodic report of Japan," August 20, 2014, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fCO%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fCO%2f6&Lang=en).

Internet and mobile penetration increased slightly during the coverage period. Service is high quality, and speeds are improving year on year (see Key Indicators).

Mobile penetration figures include access via personal handy-phone (PHS) handsets, an affordable cell phone alternative with limited range that helped popularize mobile internet before the introduction of smartphones. But smartphones have since transformed the experience of getting online. Fifty-seven percent of internet users accessed the internet using a computer in 2015, according to the latest available government figures, down from seventy-nine percent in 2011.<sup>2</sup> Smartphone use as a means to access the internet increased dramatically over the same period, and offered the primary means of internet access for 54.3 percent of users at the end of 2015, when the latest available figures were published.<sup>3</sup> Tablets nudged out mobile phones and PHS handsets in the latest data, with tablet internet usage at 18.3 percent compared to 15.8 percent for feature phones or PHS.<sup>4</sup>

Increasing smartphone use has made the mobile market more competitive and resulted in improved pricing options. Providers have subsidized second and third devices, made data and family plans cheaper, and at least one offers discounts to customers with more than five years of continuous service.

The government invested heavily in Wi-Fi networks during the reporting period in advance of the 2020 Tokyo Olympics.<sup>5</sup> Some companies offer free Wi-Fi, including the private Wire and Wireless (Wi2) company, part of the KDDI group which offers free internet access in restaurants, coffee shops, and some train stations; registration requires an email address.<sup>6</sup> Wi-Fi access has been tied to mobile subscriptions in the past, a barrier for users without contracts.<sup>7</sup>

The cost of service can otherwise be quite high, though they are becoming more affordable. According to government statistics, the average cost of internet access throughout Japan was JPY 3,411 (US\$30) in 2016, compared to JPY 6,505 (US\$64) in 2014.<sup>8</sup> But government statistics show major disparities between the average costs for households in regional areas, with connectivity costs in mid-sized cities being the most expensive in 2016 (JPY 6,466 per month, (US\$57)) and small cities, towns, and villages being JPY 5,964 per month (US\$53).<sup>9</sup> Connectivity for households in the heavily populated Kinki (Osaka-Kyoto) and Kanto (Tokyo area) regions was nearly JPY 800 (US\$7) more per month than the least expensive Tohoku (north-east) region.<sup>10</sup> Many providers bundle digital media

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2 Ministry of Internal Affairs and Communications, "Communication Service Use Trend, 2011" [in Japanese], <http://www.soumu.go.jp/johotsusintokei/statistics/statistics05.html>.

3 2016 Ministry of Internal Affairs and Communications White Paper (English), p. 62. Available at <http://www.soumu.go.jp/johotsusintokei/whitepaper/eng/WP2016/chapter-5.pdf>

4 2016 Ministry of Internal Affairs and Communications White Paper (English), p. 62. Available at <http://www.soumu.go.jp/johotsusintokei/whitepaper/eng/WP2016/chapter-5.pdf>

5 Tim Hornyak, "Hot spot: Is Tokyo finally going wireless?," *Japan Times*, July 9, 2016, <https://www.japantimes.co.jp/life/2016/07/09/digital/hot-spot-tokyo-finally-going-wireless/#.WcUKz7J97A5>.

6 Starbucks, "at\_STARBUCKS\_Wi2," [http://starbucks.wi2.co.jp/pc/index\\_en.html](http://starbucks.wi2.co.jp/pc/index_en.html).

7 Nevin Thompson, "Japan Finally Gets Free Public WiFi... Just Not For Japanese Residents" *Global Voices*, September 18, 2016, <https://globalvoices.org/2016/09/18/japan-finally-gets-free-public-wifi-just-not-for-japanese-residents/>.

8 Statistics Japan, Katei shōhi jyōkyō chōsa nenpō (Heisei 26 nen) kekka-no gaikyō (Household Consumption Survey Annual Report 2014, Overview of Results) [in Japanese], <http://www.stat.go.jp/data/joukyou/2014ar/gaikyou/index.htm>.

9 Statistics Japan, Katei shōhi jyōkyō chōsa nenpō (Heisei 28 nen) tōkei-hyō (Household Consumption Survey Annual Report 2016, Statistics Tables) [in Japanese], <http://www.stat.go.jp/data/joukyou/2016ar/index.htm>

10 Statistics Japan, Katei shōhi jyōkyō chōsa nenpō (Heisei 28 nen) tōkei-hyō (Household Consumption Survey Annual Report 2016, Statistics Tables) [in Japanese], <http://www.stat.go.jp/data/joukyou/2016ar/index.htm>.

subscriptions, including cable television, Voice over IP (VoIP), and email addresses, pushing costs higher.

Access is well distributed across the population, though less common among the elderly.<sup>11</sup> Mobile phone operators are expanding their market for handsets designed for children and the elderly, with easy-to-use, large-button phones.

## Restrictions on Connectivity

Japan's telecommunications infrastructure is advanced, and there have been no reports of the government deliberately disconnecting telecommunications service. Providers continued to develop infrastructure in 2017, investing in Wi-Fi to alleviate mobile network congestion and testing 5G service.<sup>12</sup>

Connectivity is occasionally restricted by accident. Subscribers with NTT and KDDI reported an apparent outage in August 2017 that was caused by human or technical error. It was resolved after 23 minutes.<sup>13</sup> Network congestion and server outages periodically affect mobile use. Infrastructure was also severely damaged in 2011, when an earthquake and tsunami hit Japan's east coast, triggering a nuclear plant accident. Many people lost service for days or weeks; mobile phone usage dropped by almost half in the affected areas.<sup>14</sup>

There is full competition in the ownership of gateways to the international internet.<sup>15</sup> Historically, Japan's internet connections were forged through cooperation among government agencies (including then-government-owned-NTT), universities, and national research institutions. The country's first N-1 Network, operational between 1974 and 1999, was operated by the University of Tokyo, the University of Kyoto, and NTT.<sup>16</sup> The network of connected institutions started to expand in the mid-1980s with the start of JUNET (Japan University Network). The Tokyo University of Science was the first to connect overseas, to the City University of New York in 1985.

## ICT Market

Japan has three major mobile operators—au (KDDI), NTT's Docomo, and Softbank. All use the CDMA wireless network or a variant. The NTT group remains dominant in practice, though hundreds of providers offer services including FTTH, DSL, and fixed or broadband wireless access (FWA or BWA).<sup>17</sup> No major foreign operators have successfully penetrated the telecommunications market independently.

NTT, formerly a state monopoly, was privatized in 1985 and reorganized in 1999 under a law

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11 Ministry of Internal Affairs and Communications, Information and Communications Statistics Database, *Heisei 26 nen chosa*, <http://bit.ly/1mLJJEI>.

12 <https://www.budde.com.au/Research/Japan-Mobile-Infrastructure-Broadband-Operators-Statistics-and-Analyses>

13 "Google linked to internet disruptions in Japan," *Japan Times*, August 26, 2017, <https://www.japantimes.co.jp/news/2017/08/26/national/japanese-government-probes-internet-disruption/#.WcEmiLKGPA4>.

14 Izumi Aizu, "The Role of ICTs During the Disaster," *Global Information Society Watch Report 2011*, Association for Progressive Communications, 2011, <http://bit.ly/1FZMXGU>.

15 ITU ICT-Eye, "Japan Profile (Latest available data: 2016)," <http://www.itu.int/icteye>.

16 Japan Network Information Center, "The Internet Timeline," accessed September 1, 2015, <https://www.nic.ad.jp/timeline/en/>.

17 Minoru Sugaya, "Regulation and Competition in the JP Broadband Market," (presentation, Pacific Telecommunications Council, Tokyo, Japan, January 15, 2012) <http://bit.ly/16U0HvB>.

promoting functional separation between the company's mobile, fixed-line, and internet services.<sup>18</sup> Asymmetric regulation, which creates stricter rules for carriers with a higher market share, helped diversify the industry.<sup>19</sup>

According to NTT Docomo figures from mid-2017, the company holds 46.1 percent (75.1 million subscribers) of the Japanese market, followed by au (KDDI) at 30.1 percent (49.1 million subscribers) and SoftBank (23.8 percent or 38.9 million subscribers) as at the end of June 2017.<sup>20</sup>

Users may switch mobile providers more easily since 2014, when the government required cell phone carriers to unlock SIM cards in mobile phones if requested by users, facilitating the use of third-party prepaid SIM cards.<sup>21</sup> In October 2014, the Ministry of Internal Affairs and Communications (MIC) issued new guidelines concerning SIM card unlocking.<sup>22</sup> Though the guidelines were subject to criticism,<sup>23</sup> they helped address concerns that the cost of switching providers favored the dominant players and created a barrier for new entrants to the market. Besides benefitting Japanese consumers,<sup>24</sup> the change is expected to serve the influx of tourists to Japan during the 2020 Tokyo Olympics.<sup>25</sup>

## Regulatory Bodies

Both the telecommunications and broadcast sectors are regulated by the Ministry of Internal Affairs and Communications (MIC), rather than an independent commission. Some self-regulatory bodies also operate to manage content and other issues.

Observers believe that the industry has generally improved since the 2001 establishment of the MIC, which was comprised of two former ministries (the Ministry of Home Affairs and the Ministry of Posts and Telecommunications) and the central government's Management and Coordination Agency. This "super ministry" regulates the telecommunications, internet, and broadcast sectors.<sup>26</sup>

Nongovernmental, nonprofit organizations supported by the relevant companies in these three sectors perform a self-regulatory function. These include television's Broadcasting Ethics and Program Improvement Organization, the Content Evaluation and Monitoring Association for mobile platforms, and the Internet Content Safety Association, which manages blocking of child

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18 Law Concerning Nippon Telegraph and Telephone Corporation, Etc., No. 85, December 25, 1984, as last amended by Law No. 87, July 26, 2005, <http://bit.ly/1FZNyIG>.

19 Toshiya Jitsuzumi, "An Analysis of Prerequisites for Japan's Approach to Network Neutrality," (paper, Proceedings of the Telecommunications Policy Research Conference, 2012) <http://bit.ly/1dPODcb>.

20 NTT Docomo Inc., NTT Docomo Factbook July 27, 2017. [https://www.nttdocomo.co.jp/english/info/media\\_center/pdf/factbook.pdf](https://www.nttdocomo.co.jp/english/info/media_center/pdf/factbook.pdf)

21 "Japanese cellular carriers to get ministry call to 'unlock' cellphones," *Asahi Shimbun*, June 29, 2014.

22 "New rule to OK unconditional switching of mobile carriers," *Japan Times*, October 1, 2014.

23 "Editorial: SIM lock removal requirement not enough for consumers," *Mainichi Daily News*, November 4, 2014.

24 "Phone users in Japan still paying for plenty of stuff they don't need," *Japan Times*, May 23, 2015.

25 "Narita airport to get SIM card vending machines," *Japan Times*, July 17, 2015.

26 Before 2001, regulation was managed by the now-defunct Ministry of Post and Telecommunications, and before that, the Diet.

pornography online.<sup>27</sup> In 2016, observers accused ministry officials of trying to restrict or influence content under the broadcast law.<sup>28</sup>

## Limits on Content

*The Supreme Court laid down important guidance regarding the removal of content in the public interest in so-called “right to be forgotten” cases after lower courts ordered search engines to delink inaccurate or irrelevant material about specific individuals from public results. Measures to address hate speech caused some controversy. Online campaigning to attract the youth vote increased around July 2016 elections to the Upper House.*

## Blocking and Filtering

No direct political censorship has been documented in Japan. ISPs voluntarily filter child pornography, and many offer parents the option to filter other immoral content to protect young internet users.<sup>29</sup> Depictions of genitalia are pixelated to obscure them for internet users based on a common—though poorly-articulated—interpretation of Article 175 of the penal code, which governs obscenity.<sup>30</sup> Otherwise, individuals or police instruct ISPs to administratively delete contested or illegal content (see Content Removal).

The threat of official content restrictions looms periodically during public debates about child safety, though carriers and content producers have successfully resisted intrusive regulation. In 2007, the MIC ordered mobile operators to install filtering software enabling parents to control content seen by their children. A coalition of groups, including the Japan Internet Providers Association and the user rights organization Movement of Internet Active Users lobbied against the mandate and mobile users can now select voluntary filters.<sup>31</sup> Complaints to the official Consumer Affairs Agency about quasi-gambling functions in games played by children on mobile devices shot up in 2011, along with calls for government regulation.<sup>32</sup> Instead, in 2012, game developers Gree and DeNA Mobage voluntarily adopted caps on purchases of virtual items by minors.<sup>33</sup> Games integrated with social networks have also been criticized for their potential for abuse by sexual predators.

## Content Removal

During the coverage period, courts continued to consider lawsuits from individuals requesting

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27 Broadcasting Ethics & Program Improvement Organization, “About BPO,” <http://bit.ly/1jevVLs>; Content Evaluation and Monitoring Association, “About EMA,” [in Japanese] <http://bit.ly/1P0Mqrf>; Internet Content Safety Association, “About the Organization,” [in Japanese] <http://bit.ly/1Mhsnmy>.

28 “Preliminary observations by the United Nations Special Rapporteur on the right to freedom of opinion and expression, Mr. David Kaye at the end of his visit to Japan (12-19 April 2016),” <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19842>.

29 Agence France-Presse, “Japan Internet Providers Block Child Porn,” Benton Foundation, April 21, 2011, <http://bit.ly/1jQS9Di>; Electronic Network Consortium, “Development and Operation of the Next-Generation Rating/Filtering System on the Internet,” press release, via New Media Development Association, April 30, 1999, <http://www.nmda.or.jp/enc/rating2nd-en.html>.

30 Amanda Dobbins, “Obscenity In Japan: Moral Guidance Without Legal Guidance,” 2009, [http://works.bepress.com/amanda\\_dobbins/1](http://works.bepress.com/amanda_dobbins/1).

31 Izumi Aizu, “Japan,” *Access to Online Information and Knowledge 2009*, Global Information Society Watch, <http://bit.ly/16AioGr>.

32 Ishaan, “Japanese Social Games Risk Seeing Crackdown,” *Siliconera*, May 7, 2012, <http://bit.ly/1Mht0fY>.

33 Dr. Serkan Toto, “Self-Regulation: Dena Introduces Payment Caps For Minors On Mobage [Social Games],” Kantan Games, Inc (blog), April 24, 2012, <http://bit.ly/1MhtfYn>.

that search engines delink inaccurate or irrelevant material about them from public results, but the Supreme Court laid down important guidance setting limits on “right to be forgotten” removals.

These “right to be forgotten” cases increased around the same time as a 2014 decision by the Court of Justice of the European Union, which excluded public figures from the ruling to prevent abuse, but placed the onus of assessing whether requests merit that exception on the companies that operate search engines. Until early 2017, there was no similar legal guidance in Japan, and cases against search engine companies were dealt with by the courts at various levels on an individual basis. One newspaper article noted that 52 claims for injunctions had been received by district courts during the period January to September 2016.<sup>34</sup>

Since late 2015, a number of high-profile cases have come before the Tokyo District Court and Saitama District Court, wherein the courts ruled that search results must be removed.<sup>35</sup>

In one case, the Tokyo High Court rescinded the lower court’s judgement in July 2016 on the grounds that “the right to be forgotten is not a privilege stated in law and its prerequisites or effects are not determined.”<sup>36</sup> The case involved a man who said Google should remove search results documenting a crime he committed in the past. Upon appeal through higher courts, the Japanese Supreme Court ruled in favor of Google in January 2017, reversing previous trends at the lower court levels. The Court reasoned that “removal of information can be demanded only when privacy protection concerns clearly outweigh the public’s interest in the disclosure of information online.”<sup>37</sup> The court indicated that points such as the content of the search results, the scope of disclosure, social status of the persons involved, the “social situation,” and the “necessity of disclosing facts” were critical in examining whether search engine results should be removed.<sup>38</sup>

Service providers protect themselves from civil liability by adhering to voluntary guidelines governing takedown requests.<sup>39</sup> The 2001 Provider Liability Limitation Act directed ISPs to establish a self-regulatory framework to govern takedown requests involving illegal or objectionable content, defamation, privacy violations, and copyright infringement.<sup>40</sup> In 2002, industry associations produced guidelines designed to protect ISPs from legal liability within the jurisdiction of the Japanese courts. Under the guidelines, anyone can report material that infringes directly on their personal rights to the service provider, either to have it removed or to find out who posted it. No third party can do so. The provider notifies the individual who posted the content, and either fulfills the request with their permission or removes the content without the authors’ approval if they fail to respond. If the poster refuses permission, the service provider is authorized to assess the complaint, and comply if they believe it is legitimate. In this scenario, an ISP could give the complainant information to identify the poster—such as their name or IP address—without that person’s consent, leading to privacy concerns.

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34 “Japan’s top court weighing ‘right to be forgotten’ criteria,” *The Japan Times*, January 31, 2017.

35 “Google ordered to delete search results on dentist’s arrest,” *The Asahi Shimbun*, November 2, 2015; “Tokyo court orders Yahoo Japan to remove search results on individual,” *Japan Today*, December 8, 2015; Japanese court recognizes ‘right to be forgotten’ in suit against Google,” *Japan Today*, February 28, 2016.

36 “Tokyo High Court overturns man’s ‘right to be forgotten,’” *The Japan Times*, July 13, 2016.

37 Tomomi Fujikouge, “Japan: Supreme Court rules on ‘right to be forgotten,’” *Privacy Matters*, February 14, 2017. <http://blogs.dlapiper.com/privacymatters/japan-supreme-court-rules-on-right-to-be-forgotten/>

38 “Limiting the right to be forgotten,” *The Japan Times*, February 8, 2017.

39 Business Software Alliance, “Country Report: Japan,” 2012, <http://bit.ly/1VH7uHq>.

40 Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders, No. 137, November 30, 2001, available at UNESCO, <http://bit.ly/1VH6zBu>.

In recent years, content removals have focused on hate speech and obscene content, including child pornography and “revenge porn,” explicit images shared without consent of the subject. The Tokyo-based Safer Internet Association reported it had been asked to deal with over 2,000 cases of revenge porn between September 2014 and November 2016 and had succeeded in getting 80 to 90 percent deleted.<sup>41</sup> A law to address revenge porn passed in November 2014 (see Legal Environment). Under the law, providers must comply with takedown requests within two days.<sup>42</sup>

Inflammatory nationalist speech targeting Japanese residents of Korean origin and other minority groups is also subject to removal. In February 2017, the Japanese video website Niconico Dōga took down two videos posted from an IP address within the city of Osaka after municipal officials flagged them for violating a local ordinance regulating hate speech (see Media, Diversity, and Content Manipulation).<sup>43</sup> In 2015, Niconico Dōga shut down a channel operated by the anti-Korean activist group *Zaitokukai*, citing violations of its terms of service.<sup>44</sup>

The Internet Hotline Center, operated through the Internet Association Japan as part of a contract with the National Police Agency (NPA), cooperates with ISPs to solicit reports of illegal or harmful content from the public.<sup>45</sup> The center received a record high of 277,667 reports in 2016, an increase of slightly less than 30,000 reports received the previous year, and almost double the number of reports received in 2014.<sup>46</sup> The center’s website features online forms for reporting objectionable Internet-related content such as obscene images, child sexual abuse images, illegal drugs, prostitution, and other harmful content, as well as a referencing system allowing users to look up the status of submitted reports. From April 2016, the Internet Hotline Center also provides reports to “Safe-line,” a website provided by the Safer Internet Association (SIA).<sup>47</sup> Once the SIA receives a report, it will either file a police report and inform the Internet Hotline Center or it will make a request for removal to the domestic or overseas provider.<sup>48</sup>

## Media, Diversity, and Content Manipulation

Commentators noted “alarming signs of deteriorating media freedoms in Japan” in 2016, although not explicitly affecting the internet.<sup>49</sup> In June 2017, the U.N. special rapporteur on freedom of expression noted in a report that there were “significant worrying signals” about Japan’s record on freedom of expression, citing public debate of the Fukushima nuclear reaction incident among other issues.<sup>50</sup>

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41 “The repercussions of revenge porn,” *Mainichi Japan*, Japan 23, 2017, <https://mainichi.jp/english/articles/20170123/p2a/00m/0na/012000c>

42 “*Ribenjiporuno ni chōeki 3 nen ika no bassoku jimin hōan teishutsu e*” (“LDP submit Bill to punish revenue porn with up to three years’ imprisonment”), *Nihon Keizai Shimbun*, October 12, 2014. ([http://www.nikkei.com/article/DGXLASF511H03\\_S4A011C1PE8000/](http://www.nikkei.com/article/DGXLASF511H03_S4A011C1PE8000/))

43 Nevin Thompson, “In Effort to Stop Anti-Korean Hate Speech, Osaka Mayor Wants to Loosen Internet Privacy Laws,” *Global Voices*, July 7, 2017, <https://globalvoices.org/2017/07/07/in-effort-to-stop-anti-korean-hate-speech-osaka-mayor-wants-to-loosen-internet-privacy-laws/>.

44 “Video posting site shuts down anti-Korean Zaitokukai activists’ channel,” *The Japan Times*, May 20, 2015.

45 Internet Hotline Center Japan, “Annual Statistics 2013,” May 1, 2014, <http://www.internethotline.jp/statistics/2013e.pdf>.

46 Internet Hotline Center Japan, “Annual Statistics 2016 (Full Year)” <http://www.internethotline.jp/pdf/statistics/2016.pdf> [in Japanese].

47 Internet Hotline Center Japan, “Annual Statistics 2016 (Full Year)” <http://www.internethotline.jp/pdf/statistics/2016.pdf> [in Japanese].

48 Safer Internet Association, Safe-line Operational Guideline, <https://www.saferinternet.or.jp/english/en-guideline/>

49 Marvin Fackler, “The Silencing of Japan’s Free Press,” *Foreign Policy*, May 27, 2016, <http://foreignpolicy.com/2016/05/27/the-silencing-of-japans-free-press-shinzo-abe-media/>.

50 Justin Curry, “Japan accused of eroding press freedom by UN special rapporteur,” *The Guardian*, June 13, 2017 <https://www.theguardian.com/world/2017/jun/13/japan-accused-of-eroding-press-freedom-by-un-special-rapporteur>.

The government passed a law outlining measures authorities could take to educate the public and combat hate speech against people of overseas origin and their descendants in mid-2016.<sup>51</sup> Both officials and civic groups have sought to address the nationalistic and sometimes violent discourse spread online by Japanese trolls or *netōyo* since at least 2013, particularly targeting South Koreans and Chinese communities amid territorial disputes between Japan and their respective governments.<sup>52</sup> Japanese political parties drafting the legislation struggled to balance restrictions on racial and ethnic slurs with freedom of expression guarantees in the Constitution,<sup>53</sup> and the law did not ban or penalize hate speech, though some critics argued it would be ineffective as a result.<sup>54</sup> Several municipalities asked for a clearer definition of hate speech under the law in 2017.<sup>55</sup>

Some city governments have also proposed local ordinances on the issue, and Osaka passed one in January 2016. The ordinance authorized the public disclosure of groups who disseminate hate speech, defined as “communication which defames and aims to exclude a particular group based on race or ethnicity” and including “online transmission,” according to news reports.<sup>56</sup> At least two videos were removed at the municipality’s request in March 2017, and the mayor also attempted to compel the hosting platform to reveal the poster’s legal name, leading to privacy concerns (see Content Removal and Surveillance, Privacy, and Anonymity).<sup>57</sup> Other local governments such as the city of Kawasaki (Kanagawa Prefecture) indicated that they would be drawing up guidelines during 2017 to combat hate speech.<sup>58</sup>

There are few known cases of the government or powerful groups proactively manipulating online news or other content. In a significant exception, government officials and the Tokyo Electric Power Company (TEPCO) withheld data about pollution after a nuclear power plant in Fukushima prefecture was severely damaged by the 2011 earthquake and tsunami. The MIC requested that four industry associations monitor false or unsubstantiated content circulating about the disaster online. Some observers said this was a measure to control public discourse, though deletions were not widespread. Service providers removed content, which included images of corpses, in at least 13 cases,<sup>59</sup> though the National Police Agency reported 41 items for review.<sup>60</sup> Others found an outlet to report on the aftermath of the disaster online (see Digital Activism).<sup>61</sup> Media scrutiny of reportage involving the 2011 triple disaster continued during the coverage period. In June 2016, articles

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51 <https://www.japantimes.co.jp/news/2017/05/22/national/social-issues/year-enactment-hate-speech-law-xenophobic-rallies-nearly-half/>

52 Keiko Tanaka, “Countering Hate Speech in Tokyo’s Koreatown,” trans. Aparna Ray, *Global Voices*, March 6, 2014, <http://bit.ly/1Rw5GLE>; “U.N. Panel urges Japan to regulate hate speech by law,” *The Japan Times*, August 30, 2014.

53 “Party bickering shelves plan for law against ‘hate speech,’” *The Asahi Shimbun*, August 28, 2015.

54 <https://www.japantimes.co.jp/news/2016/05/24/national/social-issues/diet-passes-japans-first-law-curb-hate-speech/>

55 “Japanese government gives examples of what qualifies as “hate speech” in anti-discrimination law,” *Sora News 24*, February 7, 2017, <http://en.rocketnews24.com/2017/02/07/japanese-government-gives-examples-of-what-qualifies-as-hate-speech-in-anti-discrimination-law/>.

56 “Osaka assembly passes Japan’s 1<sup>st</sup> ordinance to deter hate speech,” *Japan Today*, January 16, 2016.

57 Nevin Thompson, “In Effort to Stop Anti-Korean Hate Speech, Osaka Mayor Wants to Loosen Internet Privacy Laws,” *Global Voices*, July 7, 2017, <https://globalvoices.org/2017/07/07/in-effort-to-stop-anti-korean-hate-speech-osaka-mayor-wants-to-loosen-internet-privacy-laws/>; [https://www.japantimes.co.jp/opinion/2017/06/10/editorials/make-hate-speech-law-stronger/#.Wdtd\\_zBUtPY](https://www.japantimes.co.jp/opinion/2017/06/10/editorials/make-hate-speech-law-stronger/#.Wdtd_zBUtPY).

58 “Kawasaki looks at guidelines for regulating hate speech campaigns in advance,” *Mainichi Japan*, December 28, 2016. <https://mainichi.jp/english/articles/20161228/p2a/00m/0na/013000c>

59 Madeline Earp, “Freelance, online reporting discouraged on nuclear threat,” *Committee to Protect Journalists* (blog), April 14, 2011, <https://cpj.org/x/42f5>; Ministry of Internal Affairs and Communications, “Demand for Telecommunications Carriers Associations Regarding the Appropriate Response to False Rumors on the Internet Related to the Great East Japan Earthquake,” [in Japanese] press release, April 6, 2011, <http://bit.ly/1PjW9It>.

60 National Police Agency, “For Police Responding to False Rumors on the Internet,” [in Japanese] June 21, 2011, <http://bit.ly/1VH7IOT>.

61 Keiko Tanaka, “20 Bitter Voices Rise From Fukushima After Japan’s 2011 Nuclear Disaster,” trans. Taylor Cazella, *Global Voices*, December 2, 2013, <http://bit.ly/1L90n0j>.

appeared in major Japanese news outlets describing government officials pressuring TEPCO not to use the term “meltdown” at a news conference shortly after the events at the Fukushima Dai’ichi nuclear plant.<sup>62</sup>

YouTube, Twitter, Facebook, and international blog-hosting services are freely available, as are popular local platforms like Niconico Dōga, a video-sharing site, and LINE, a chat application that was launched in Japan in 2011. Blogs have a significant impact on public opinion, and several independent journalists are becoming influential through personal or commercial websites and social media accounts. Yet most online media remain small and community-based,<sup>63</sup> with no major national successes.<sup>64</sup>

The mainstream media’s habit of compliance and restraint may be standing in the way of the combative online news culture flourishing elsewhere in Asia.<sup>65</sup> Kisha clubs, formal organizations only open to traditional media companies, and an advertising market that favors established players may be preventing digital media from gaining a foothold in the market. Kisha clubs provide essential access to officials in Japan, but have been accused of discriminating against new media practitioners in the past. In 2012, at least one online journalist was denied access to one of their Tokyo locations,<sup>66</sup> and the only two freelancers permitted to join an official group of 40 reporters on a tour of the Fukushima nuclear disaster site were forbidden from taking equipment.<sup>67</sup> Some online news outlets have struggled to sustain themselves financially.

Japanese citizens exercise some self-censorship online, often on historical and social issues. The society at large prefers “harmony,” and people avoid criticizing the role of Japan’s Emperor, especially when connected with historic events like World War II. Individuals and public figures who break this code risk censure and even attacks from right-wing fanatics, who notoriously tried to assassinate the Nagasaki mayor on these grounds in the 1990s. Though exceptional, incidents like this still exert a chilling effect on Japanese expression.

## Digital Activism

Online campaigning continued to advance ahead of the July 2016 Upper House election, only the third national-level election since legislation passed in 2013 allowing the use of websites and social networking services for political campaigns (see Legal Environment).<sup>68</sup> The election was the first national poll since Japan’s voting age was lowered from 20 to 18 in mid-June 2015. Short videos promoting voting among young people were created by the national election commission as well as the Tokyo Metropolitan election management board and popularized on Twitter. Sixteen prefecture-based election management boards utilized Twitter to encourage voting, and 14 election management boards had Facebook accounts. Major political parties also utilized social media

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62 Kazuaki Nagata, “Tepco chief likely banned use of ‘meltdown’ under government pressure: report,” *The Japan Times*, June 16, 2016.

63 Keiko Tanaka, “Japan’s Citizen Media Meet at Mikawa Medifes 2014,” *Global Voices*, May 4, 2014, <http://bit.ly/1hsF0OP>.

64 Arianna Huffington, “Postcard From Japan: Talking Zen, Abenomics, Social Networking and the Constitution With Prime Minister Shinzo Abe,” *Huffington Post*, May 9, 2013, <http://huff.to/1MhvStk>.

65 Roger Pulvers, “Danger lurks when self-restraint segues into media self-censorship,” *The Japan Times*, January 10, 2010, <http://bit.ly/1Nq7dUR>.

66 Keiko Tanaka, “Online Journalist Barred from Japan’s Diet Press Hall,” *Global Voices*, October 12, 2012, <http://bit.ly/1L1S9t1>.

67 Reporters Without Borders, “Freelance Journalists Face Discrimination On Fukushima Plant Visit,” May 23, 2012, <http://bit.ly/1Rw6qAu>.

68 “公職選挙法—SNSでの選挙運動はOK, メールはNG” (Public Offices Election Law: Using SNS for campaign activities is okay, using email is ‘no good’). *President* (online), July 4, 2013 (July 15, 2013 print edition), <http://president.jp/articles/-/9831>.

to attract the youth vote. The Liberal Democratic Party (LDP) and its coalition partner, the New Komeito Party, gained 10 seats in the Upper House. Voter turnout among youth aged 18 and 19 was estimated at 45.5 percent.<sup>69</sup>

Much digital activism in Japan has been effective at the local rather than national level. Grassroots online movements emerged in the mid-1980s when local community networks organized to protest deforestation in Zushi, Kanagawa prefecture.<sup>70</sup> Since then, some forms of digital activism have taken on social issues, such as one tracking racist graffiti in Tokyo.<sup>71</sup>

More initiatives sprang up in the “post-3.11” era (3.11 connotes the March 11, 2011 earthquake, tsunami, and nuclear plant accident). In the immediate aftermath of the triple disaster, maps sharing public information about disaster relief,<sup>72</sup> and Google’s “Person Finder” web application were examples of the effective use of the internet to facilitate recovery.<sup>73</sup> Digital activists further spurred large demonstrations and protests against nuclear energy, many of which were organized through the internet and social media. Echoes of that disaster could still be heard in online campaigns during the coverage period. In April 2017, a cabinet minister was forced to resign after widespread criticism of his remarks about Tohoku, a rural area still recovering from 3.11. The minister said an earthquake in Tohoku was preferable to one in a more populous urban environment, sparking an informal online movement to rebut his viewpoint.<sup>74</sup>

## Violations of User Rights

*The environment for surveillance saw some changes during the reporting period, when information was published revealing Japanese intelligence agencies were cooperating with the U.S. National Security Agency to conduct mass surveillance in the region. It’s not clear if these resources have been used for domestic surveillance, but there were other concerning developments, including a conspiracy law that may allow police to seek wiretap warrants in a wider range of circumstances. The Supreme Court separately rejected a challenge to police surveillance of the Muslim community.*

## Legal Environment

Article 21 of Japan’s constitution prohibits censorship and protects freedom of “speech, press and all other forms of expression,” as well as the “secrecy of any means of communication.”<sup>75</sup> In general, individuals and the media can exercise this in practice, though social and legal constraints exist. Several laws have negative implications for free speech or privacy, including a conspiracy law passed in June 2017 (see Surveillance, Privacy, and Anonymity).

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69 Ministry of Internal Affairs and Communications, “Dai24kai Sangiin giin tsujō senkyo happyō shiryō, 7. Nenreibetsu tōhyō jōkyō,” <http://www.soumu.go.jp/senkyo/24sansokuhou/index.html>

70 Howard Rheingold, *The Virtual Community*, MIT Press, 1993.

71 Keiko Tanaka, “Countering Hate Speech in Tokyo’s Koreatown,” *Global Voices*, March 6, 2014, <http://bit.ly/1Rw5GLE>.

72 Keiko Tanaka, “Japan: OpenStreetMap Aggregates Typhoon Info,” *Global Voices*, October 18, 2013, <http://bit.ly/1jd6h9c>;

Keiko Tanaka, “Mapping Earthquake Reconstruction in Tohoku, Japan,” *Global Voices*, October 7, 2013, <http://bit.ly/1PjWKd0>.

73 David Goldman, “Google gives ‘20%’ to Japan crisis,” *CNN Money*, March 17, 2011, [http://money.cnn.com/2011/03/17/technology/google\\_person\\_finder\\_japan/](http://money.cnn.com/2011/03/17/technology/google_person_finder_japan/).

74 “‘I’m Glad I’m From Tohoku’ Trends on Twitter Following Japanese Politician’s Cruel Words,” *Global Voices*, April 29, 2017, <https://globalvoices.org/2017/04/29/im-glad-im-from-tohoku-trends-on-twitter-following-japanese-politicians-cruel-words/>

75 The Constitution of Japan, November 3, 1946, <http://bit.ly/1lLp7Tm>.

The Act on the Protection of Specially Designated Secrets came into force in December 2014, despite objections from the opposition, civil society, and protesters. News reports said the government was preparing to destroy classified documents for the first time under the law in April 2017.<sup>76</sup> The law gives a range of officials the discretion to indefinitely restrict public information pertaining to national security.<sup>77</sup> Overseen by government officials rather than an independent body, it offers no protection for whistleblowers who reveal wrongdoing.<sup>78</sup> Intentional leaks are punishable by up to 10 years' imprisonment, and unintentional leaks by up to 2 years. In addition, individuals who knowingly receive secrets from an administrative organ risk up to five years in prison where the disclosures were intentional and one year for disclosures made through negligence.<sup>79</sup> Subsequent guidelines outlined four main fields of state secrets (defense, diplomacy, anti-espionage, and antiterrorism measures), which are further divided into 55 categories.<sup>80</sup>

Other laws include potentially disproportionate penalties for online activity, including a 2012 legal revision targeting copyright violators that includes any internet user downloading content they know has been illegally copied, as opposed to just those engaged in piracy for commercial gain.<sup>81</sup> While both uploading and downloading pirated material was already illegal under the copyright law, with uploaders subject to 10 years' imprisonment or fines up to JPY 10 million (US\$102,000), the version in effect since October 1, 2012 added two years in jail or fines up to JPY two million (US\$20,500) for downloading a single pirated file.<sup>82</sup> The Japanese Bar Association said that downloading, as an essentially insignificant personal act, should be regulated by civil instead of criminal laws.<sup>83</sup>

A 2013 revision of the Public Offices Election Act undid long-standing restrictions on the use of the internet for election campaigns. Limits remain on paid online advertising and campaign emails, which could only be sent directly by a party or candidate—not a supporter—in a measure designed to prevent fraud.<sup>84</sup> While these provisions were contested and revisions are still planned,<sup>85</sup> news reports said politicians violating these restrictions face a potential JPY 300,000 (US\$3,060) fine or one year in prison; imprisonment would strip them of political rights to vote or run for office. Voters found improperly soliciting support for a candidate via email could be fined JPY 500,000 (US\$5,100) or jailed for two years, which would also deprive them of political rights.<sup>86</sup>

Article 175 of the Japanese penal code bans the sale or distribution of broader categories of

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76 "Gov't to discard 'special state secret' for 1st time under secrecy law," *Mainichi Japan*, April 17, 2017

77 Prime Minister of Japan, "Overview of the Act on the Protection of Specially Designated Secrets (SDS)," 2013, <http://bit.ly/1OobNSj>.

78 "Weak state secrets oversight," *The Japan Times*, July 28, 2014, <http://bit.ly/1Mgu5QZ>.

79 Cabinet Secretariat, "Overview of the Act on SDS Protection: 5. Penalty and Others," Preparatory Office for Enforcement of the Act on the Protection of Specially Designated Secrets," [http://www.kantei.go.jp/jp/topics/2013/headline/houritu\\_gaiyou\\_e.pdf#page=6&zoom=auto,-8,62](http://www.kantei.go.jp/jp/topics/2013/headline/houritu_gaiyou_e.pdf#page=6&zoom=auto,-8,62).

80 "State secrets to be refined into 55 fields," *The Japan News (Yomiuri Shimbun)*, July 18, 2014.

81 Daniel Feit, "Japan Passes Jail-for-Downloaders Anti-Piracy Law," *Wired*, June 21, 2012, <http://wrd.cm/1hsGKaV>.

82 Maira Sutton, "Japan's Copyright Problems: National Policies, ACTA, and TPP in the Horizon," *Deeplinks Blog*, Electronic Frontier Foundation, August 21, 2012, <https://www.eff.org/deeplinks/2012/08/copyright-japan>.

83 "Japan Introduces Piracy Penalties for Illegal Downloads," *BBC*, September 30, 2012, <http://bbc.in/1g7S3gn>.

84 "Editorial: Internet election campaigns can change Japan's politics," *Asahi Shimbun*, April 20, 2013, <http://bit.ly/1cOFsVZ>.

85 Ida Torres, "Japan's Internet election campaigning ban one step closer to being lifted," *Japan Daily Press*, April 4, 2013, <http://bit.ly/1R1hVPk>.

86 Ayako Mie, "Election campaigning takes to Net," *The Japan Times*, April 11, 2013, <http://bit.ly/1GyqxaQ>; "Japanese parliament permit use of Internet campaigning during elections," *TJC Global (blog)*, April 20, 2013, <http://bit.ly/1LBPvNV>.

obscene material, and while it dates from over 100 years ago, it is considered to apply online.<sup>87</sup> However, it does not define what constitutes obscenity, leading to concerns that it may infringe on artistic expression and LGBTI (lesbian, gay, bisexual, transgender, and intersex) rights.<sup>88</sup>

Other laws regulate online activity but they are not known to have resulted in abuse or disproportionate penalties. Heightened awareness of revenge porn and online harassment culminated in the ruling Liberal Democratic Party (LDP) passing a bill criminalizing revenge porn in November 2014. The law stipulates that “offenders who distribute such images could face up to three years in prison or a fine of up to JPY 500,000 (US\$5,100), with third-party distribution also leading to up to one year in prison or a fine of JPY 300,000 (US\$3,060). Takedown requests under the law are processed faster (see Content Removal).<sup>89</sup> Japan’s anti-stalking law, originally enacted in 2000, was revised in 2013 to address e-mail harassment, and further revised in December 2016 to penalize repeated messages using social network services and blog posts.<sup>90</sup> In early 2017, the Tokyo Metropolitan government announced plans to draft guidelines to regulate “sexting” by young people.<sup>91</sup>

## Prosecutions and Detentions for Online Activities

No citizens faced politically-motivated arrest or prosecution for digital activity during the coverage period of this report. Arrests are periodically reported under the copyright law, which carries possible prison terms for both uploading and downloading content without the permission of the copyright owner (see Legal Environment). Reported cases rarely appear to involve commercial piracy, and some internet users may be exposed to heavier penalties based on their use of peer to peer file-sharing software, which simultaneously downloads and uploads files even if users have accessed them for personal use and are not actively trying to disseminate them.<sup>92</sup> It is unclear how many of those arrested are ultimately sentenced, though nine were referred to prosecutors in March 2017.<sup>93</sup>

In one example from the reporting period, police in Fujisawa city arrested an unemployed 54-year-old man in November 2016 for sharing a pirated copy of a popular movie and two songs through a file-sharing site. News reports said he had obtained the movie through the same site, rather than copying it himself, and did not understand that he had committed a crime.<sup>94</sup> The case was referred to prosecutors, but no information was available about its status in mid-2017.

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87 James R. Alexander, “Obscenity, Pornography, and the Law in Japan: Reconsidering Oshima’s *In the Realm of the Senses*,” *Asian-Pacific Law and Policy Journal* 4, no.1 (2003): 148-168, <http://bit.ly/1OodGhM>; Keiho [Penal Code] Act No. 45 of April 24, 1907, [in Japanese] <http://bit.ly/1JvbwGD>.

88 Keiko Tanaka, “Japan’s Porn Law is Strangling Artists,” February 18, 2013, <http://bit.ly/1VHbkLA>.

89 “Release of explicit images without consent to be criminalized,” *Japan Times*, November 18, 2014.

90 “Revised law increases police powers against online stalking,” *The Japan Times*, December 2016.

91 “Tokyo to draft stiffer rules on naked selfies to shield younger internet users,” *The Japan Times*, February 11, 2017.

92 “Japan Police Arrest 44 in Nationwide Internet Piracy Crackdown,” *Torrent Freak*, February 24, 2016, <https://torrentfreak.com/japan-police-arrest-44-in-nationwide-internet-piracy-crackdown-160224/>.

93 Japanese Society for Rights of Authors, Composers and Publishers, “7 Police Headquarters Nationwide refer 9 Persons to Prosecutors for Illegal Uploading of Music Data Files Using File-Sharing Software “Shareaza” and others,” March 7, 2017, <http://www.jasrac.or.jp/ejhp/release/2017/0307.html>.

94 “54-Year-Old Unemployed Man Arrested for Illegally Uploading “your name,” *Crunchyroll*, November 5, 2016, <http://www.crunchyroll.com/anime-news/2016/11/05/54-year-old-unemployed-man-arrested-for-illegally-uploading-your-name>.

## Surveillance, Privacy, and Anonymity

The environment for surveillance saw some changes in the past year. In April 2017, leaked documents revealed U.S. intelligence agents supplied Japanese counterparts with advanced mass surveillance equipment in 2013. The lack of transparency surrounding these capabilities was cause for concern in light of other developments which may have implications for internet users, including a conspiracy law that may allow police to seek wiretap warrants in a wider range of circumstances. The Supreme Court separately rejected a challenge to police surveillance of Muslims.

Japan's Supreme Court protects privacy through its interpretation of Article 13 of the constitution, which provides for the right to life and liberty.<sup>95</sup> "Secrecy of communication" is also protected under telecommunications laws.<sup>96</sup>

A conspiracy law passed in June 2017 opened more cases to possible surveillance. It criminalizes "planning" to commit a series of newly-classified "serious crimes" that could supposedly fund terrorism, including copyright violations, potentially making more suspects subject to wiretaps. The United Nations special rapporteur for privacy noted that "in order to establish the existence and the extent of such "a planning" and "preparatory actions" it is logical to assume that those charged would have had to be subjected to a considerable level of surveillance beforehand."<sup>97</sup>

Under a wiretap law enacted in 2000, law enforcement agents may seek a court order to conduct electronic surveillance in criminal investigations involving drugs, firearms, human trafficking, or organized murders, in an exception to articles of other laws that explicitly forbid wiretapping.<sup>98</sup> In 2016, the law was expanded to include fraud, theft, and child pornography.<sup>99</sup> The law obliges agents to notify targets of wiretaps after investigations are concluded and inform the Diet about the number they implement annually. Critics say the law does not prevent the systematic storage of intercepted communications or protect innocent parties.<sup>100</sup> In February 2017, the Justice Ministry announced that there were 10,451 mobile and landline phones tapped during 2016, leading to 33 arrests.<sup>101</sup>

The wiretap law was controversial when it passed, in part due to the authorities' periodic abuse of surveillance powers.<sup>102</sup> Security agents and the military were subsequently accused of conducting illegal surveillance in cases involving national security in 2003 and 2004.<sup>103</sup> In June 2016, Japan's Supreme Court dismissed a legal challenge to the practice of police profiling of Muslims and monitoring places of worship and other venues used by the community. The original case was brought after a 2010 leak of police documents revealed Muslims were subject to widespread

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95 Privacy International, "Chapter i: Legal Framework," in *Japan*, December 12, 2006, <https://www.privacyinternational.org/reports/japan/i-legal-framework>.

96 Ministry of Internal Affairs and Communications, Telecommunications Business Act, Act No. 86 of December 25, 1984, <http://bit.ly/1Zhfm8n>.

97 [http://www.ohchr.org/Documents/Issues/Privacy/OL\\_JPN.pdf](http://www.ohchr.org/Documents/Issues/Privacy/OL_JPN.pdf)

98 Privacy International, "Chapter ii: Surveillance," in *Japan*, December 12, 2006, <https://www.privacyinternational.org/reports/japan/ii-surveillance-policy>.

99 Ibid.

100 Privacy International, "Chapter ii: Surveillance."

101 "10,451 police wiretaps yielded just 33 arrests in 2016: ministry," *The Japan Times*, February 17, 2017.

102 In 1997, a court ordered the government to pay a senior member of the Japanese Communist Party 4 million yen [US\$35,500] in damages for illegally wiretapping his residence in the 1980s. See, "Tokyo, Kanagawa Bow to Wiretap Ruling," *The Japan Times*, July 7, 1997, <http://bit.ly/1P0TRhW>.

103 Reuters, "Japan's Military Watched Citizens: Communist Party," *bdnews24*, June 6, 2007, <http://bit.ly/1PjY3ss>.

monitoring for possible terrorist activity. It was not clear how much of the activity involved digital, as opposed to physical surveillance.<sup>104</sup> The 2014 state secrets law, which covers national security issues, may make related surveillance abuses harder to document (see Legal Environment).

Some Japanese agencies may have equipment enabling blanket surveillance of citizens, though it's not known how they have been used. In April 2017, *The Intercept* published an analysis of leaked documents that implicated Japanese police and intelligence agencies in regional surveillance operations by the United States National Security Agency (NSA). "The NSA had provided the Japanese Directorate for SIGINT with an installation of XKEYSCORE, a mass surveillance system the NSA describes as its "widest reaching" for sweeping up data from computer networks, monitoring "nearly everything a typical user does on the internet,"" according to the report.

Some companies report on data requests they receive from Japanese agencies. LINE, a messaging app with servers based in Japan, reported that 87 percent of global law enforcement requests for user data it received between July and December 2016 came from Japanese law enforcement. The company said it complies with requests that are based on a warrant, an investigation-related inquiry, or an emergency order, under the Japanese penal code and criminal procedure code.<sup>105</sup> Google reported 183 requests for user data between July and December 2016, and produced some data in 86 percent of cases. Facebook reported four government requests involving five accounts between July and December 2016 and said it produced data in 25 percent of cases; it also agreed to preserve data pending official requests in two cases.<sup>106</sup>

Privacy issues were briefly in the spotlight in June 2017 when the video site Niconico Dōga refused to reveal a video blogger's identity to Osaka city officials. The officials sought to expose the user for publishing videos about Korean residents under a local ordinance on hate speech (see Media, Diversity, and Content Manipulation).<sup>107</sup>

A law to protect personal information dating from 2003 protects individuals' data collected electronically by private and public sector organizations, where the data involves more than 5,000 records.<sup>108</sup> Law enforcement requests for this data should be supported by a warrant.<sup>109</sup> Amendments passed by the Diet in September 2015 defined "personal information" in more specific terms as "biometric information" and "numeric data that is capable of identifying a specific individual."<sup>110</sup> Anonymization provisions allow for personal data to be transferred to a third party without the consent of the subject if specific requirements are met.<sup>111</sup> Criminal sanctions for misusing personal data and restrictions on the transfer of personal data to overseas jurisdictions

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104 Ian Monroe, "Top court green-lights surveillance of Japan's Muslims," Al Jazeera, June 29, 2016, <http://www.aljazeera.com/news/2016/06/top-court-green-lights-surveillance-japan-muslims-160629040956466.html>.

105 LINE, Transparency Report, [https://linecorp.com/en/security/tr\\_report\\_2016\\_2](https://linecorp.com/en/security/tr_report_2016_2)

106 Facebook, Government Requests Report, <https://govtrequests.facebook.com/country/Japan/2016-H2/>

107 Nevin Thompson, "In Effort to Stop Anti-Korean Hate Speech, Osaka Mayor Wants to Loosen Internet Privacy Laws," *Global Voices*, July 7, 2017, <https://globalvoices.org/2017/07/07/in-effort-to-stop-anti-korean-hate-speech-osaka-mayor-wants-to-loosen-internet-privacy-laws/>.

108 Business Software Alliance, "Country Report: Japan."

109 Privacy International, "Chapter iii: Privacy Issues," in Japan, December 12, 2006, <https://www.privacyinternational.org/reports/japan/iii-privacy-issues>.

110 "New amendments to data protection law in Japan," Simmons & Simmons elexica, September 11, 2015, <http://www.elexica.com/en/legal-topics/data-protection-and-privacy/11-new-amendments-to-data-protection-law-in-japan>.

111 "New amendments to data protection law in Japan," Simmons & Simmons elexica, September 11, 2015, <http://www.elexica.com/en/legal-topics/data-protection-and-privacy/11-new-amendments-to-data-protection-law-in-japan>.

lacking equivalent data protection frameworks were also strengthened.<sup>112</sup> Finally, the amendment established the Personal Information Protection Commission as an “independent authority under the Cabinet Office,” replacing the Consumer Affairs Agency.<sup>113</sup>

Changes to the legal frameworks surrounding privacy and surveillance are often considered in the context of the ongoing digitization of citizens’ personal records. The “My Number” law, which was passed in the Diet in May 2013, introduced a unique 12-digit number for all long term residents to access unified social welfare services, including taxation; citizens will be required to link their bank records to the numbers by 2021.<sup>114</sup> Photo ID cards with “My Number” information contain electronic data chips, though many people had not received one, or bothered to apply for one, by January 2017.<sup>115</sup> Municipal governments and agencies responsible for administering these services are responsible for storing “My Number” data, leading to privacy concerns, especially in light of high profile cyberattacks that have exposed personal information (see Technical Attacks).<sup>116</sup> In mid-2016, news reports said personal information had been leaked or mistakenly disposed of in 83 instances since “My Number” was introduced;<sup>117</sup> some cases of fraud were also reported.<sup>118</sup>

Some digital activities require separate registration. Major mobile carriers require customers to present identification documents in order to subscribe. Internet cafe users are required to produce formal ID such as a driver’s license and register their name and address. Police can request these details, along with usage logs, if they detect illegal online activity.

Under voluntary guidelines drafted by four ISPs in 2005, service providers automatically inform police of internet users identified on pro-suicide websites, and comply with law enforcement requests for information related to acts of self-harm.<sup>119</sup> A law enacted in 2003 and revised in 2008 prohibits electronic communications from encouraging sexual activity with minors.<sup>120</sup> Under the law, all online dating services must register with the police, verify their customers’ ages with a driver’s license or credit card, and delete or block content that appears to involve someone under 18; most services voluntarily monitor messages in real-time to ensure compliance.

## Intimidation and Violence

No physical violence has been reported against bloggers or internet users in relation to their online activity, though there were frequent reports of online abuse, including against minority communities (see Media, Diversity, and Content Manipulation).

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112 Daisuke Tatsuno and Kensaku Takase, “Introduction of significant amendments to Japan’s Privacy Law, Global Compliance News, September 4, 2015. <https://globalcompliancenews.com/introduction-of-significant-amendments-to-japans-privacy-law/>.

113 “New amendments to data protection law in Japan,” Simmons & Simmons elexica. September 11, 2015. <http://www.elexica.com/en/legal-topics/data-protection-and-privacy/11-new-amendments-to-data-protection-law-in-japan>.

114 “My Number system raises red flags in Japan ahead of notice release,” Asia Times, October 3, 2015. <http://atimes.com/2015/10/my-number-system-raises-red-flags-in-japan-ahead-of-notice-release/>

115 “A year into new system, Japan’s My Number ID cards are not catching on, The Japan Times, January 4, 2017.

116 “Health ministry plans nationwide computer network to share everyone’s medical records via My Number, The Japan Times News, April 8, 2017; “My number’ is dangerous,” *The Japan Times*; “Editorial: Gov’t must explain purpose of ‘My Number’ identification system,” *The Mainichi*, March 31, 2015, <http://bit.ly/1FUXUd4>.

117 Japan Times, May 25, 2016.

118 “Man held on suspicion of illegally copying exec’s My Number info,” The Japan Times, December 2, 2016.

119 Carolina A. Klein, “Live Deaths Online: Internet Suicide and Lethality,” *American Academy of Psychiatry and the Law* 40, no. 4 (December 2012): 530-536, <http://www.jaapl.org/content/40/4/530.full>.

120 Akira Saka, “Regulation for Online Dating in Japan,” (presentation Keio University, Japan, 2008) <http://bit.ly/1GyrZtl>.

## Technical Attacks

Cyberattacks are not known to have been used to systematically target media or civil society groups, though distributed denial-of-service (DDoS) attacks are part of the arsenal used by nationalists in Japan, China, and South Korea to target perceived opponents in other countries, and cyberattacks have been reported against commercial and government targets.<sup>121</sup> However, public attention to cybersecurity threats has increased since mid-2015 when 1.25 million citizens were affected by the release of personal information obtained by hackers illegally accessing Japan's pension system using an email virus.<sup>122</sup>

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121 "Over 1,000 targeted cyber-attacks hit Japanese entities in 2012," *The Japan Times*, March 1, 2013, <http://bit.ly/1LBUftq>.

122 William Mallard and Linda Sieg, "Japan pension system hacked, 1.25 million cases of personal data leaked," eds. Robert Birsel and Clarence Fernandez, *Reuters*, June 1, 2015, <http://reut.rs/1QkFnWy>.