

# A PRE-WORKSHOP TUTORIAL ON THE APEC CROSS-BORDER PRIVACY RULES AND THE APEC PRIVACY RECOGNITION FOR PROCESSORS

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*APEC Workshop: Building a Dependable Framework for Privacy, Innovation and Cross-Border Data  
Flows in the Asia-Pacific Region*

22 February 2016

11:00-12:00

Lima, Peru

# Objectives

Gain an understanding of the functioning of the APEC Cross-Border Privacy Rules (CBPR), the APEC Privacy Recognition for Processors (PRP), how they benefit various stakeholders, and how to obtain the related certification/attestation.

# APEC Background

## Asia-Pacific Economic Cooperation (APEC)

- 21 countries (“economies”)
- Promotes free trade and economic growth in Asia Pacific
- Many committees and working groups

### Committee for Trade and Investment

#### Electronic Commerce Steering Group

#### Data Privacy Subgroup (DPS)

The DPS developed the APEC Privacy Framework, the APEC Cross-border Privacy Rules (CBPR) and the APEC Privacy Recognition

# APEC Privacy Framework

## APEC Privacy Framework (2005)

### Privacy Principles:

- ✓ preventing harm
- ✓ notice
- ✓ collection limitation
- ✓ uses of personal information
- ✓ choice
- ✓ integrity of personal information
- ✓ security safeguards
- ✓ access and correction
- ✓ accountability

# APEC Cross-Border Privacy Rules – Basics

## APEC Cross-Border Privacy Rules (2011)

- An enforceable privacy code of conduct for data transfers by information controllers in Asia-Pacific developed by APEC member economies
- Implements the nine APEC Privacy Principles of the APEC Privacy Framework
- Requires third-party certification
- Enforceable

# APEC Cross-Border Privacy Rules – Components of the CBPR System

## **Accountability Agents**

- Review and certify companies and dispute resolution

## **Certified companies**

- Seek CBPR certification from Accountability Agents

## **Privacy Enforcement Authorities (PEAs)**

- Enforce CBPRs pursuant to domestic law
- In cross-border matters, cooperate with other PEAs pursuant to the APEC Cross-border Privacy Enforcement Arrangement (CPEA)

# APEC Cross-Border Privacy Rules – Implementation Status

## Participating countries:



## Participating Accountability Agents (AAs):



## Certified companies:

### APEC CERTIFIED COMPANIES

Apple Inc.  
Box, Inc.  
Hewlett Packard Enterprise Company  
Hightail, Inc.

HP Inc.  
IBM  
JELD-WEN, inc.  
lynda.com, Inc.

Merck and Co., Inc.  
Rimini Street, Inc.  
Saba Software, Inc.  
Workday, Inc.

Yodlee, Inc.  
Ziff Davis, LLC

Cross Border Privacy Rules System

www.cbprs.org/default.aspx

CROSS BORDER PRIVACY RULES SYSTEM

The **APEC Cross Border Privacy Rules (CBPR) system** was developed by participating APEC economies after seeking the views of industry and civil society, to build consumer, business and regulator trust in cross border flows of personal information. The APEC CBPR system requires participating businesses to develop and implement data privacy policies consistent with the [APEC Privacy Framework](#). These policies and practices must be assessed as compliant with the minimum program requirements of the APEC CBPR system by an Accountability Agent (an independent APEC CBPR system recognised public or private sector entity) and be enforceable by law.

**Consumers**

**Business**

**Accountability Agents**

**Government**

**Quick Links**

- About CBPR system
- CBPR system documents
- Privacy in the APEC region
- News

 **APEC**  
Asia-Pacific  
Economic Cooperation

The [APEC Electronic Commerce Steering Group \(ECSG\)](#) promotes the development and use of electronic commerce. The ECSG also explores how economies may best develop legal, regulatory and policy environments that are predictable, transparent and optimised to enable economies across all levels of development to utilise information and communication technologies to drive economic growth and social development.

[About CBPR system](#) | [Glossary](#) | [Privacy in the APEC region](#) | [News](#) | [Privacy Statement](#) | [Contact us](#)

## APEC Cross-Border Privacy Rules – Website

[www.cbprs.org](http://www.cbprs.org)



# APEC Cross-Border Privacy Rules – Advantages and Benefits

## Consumers

- Enhance privacy protections
- Improve trust through strong rules, and systematic approach towards compliance (AA oversight)
- Streamlined complaint handling
- Co-ordinated government enforcement

# APEC Cross-Border Privacy Rules – Advantages and Benefits

## Government

- At political level – facilitate trade while creating credibility in privacy
- At enforcement level – facilitate cross-border cooperation
- “Front Line” enforcement by Accountability Agent augments resources and extends reach of privacy authorities
- Streamlines investigations due to a comprehensive privacy management program

# APEC Cross-Border Privacy Rules – Advantages and Benefits

## Businesses

- Facilitate legal compliance
- Facilitate cross-border transfers
- Demonstrate accountability
- Create consumer trust
- Create uniformity across the organization

# APEC Privacy Recognition for Processors (PRP)

## Background and Purpose

- Help processors demonstrate ability to implement controller's privacy obligations
- Help small and midsize processors become part of global processing network
- Help controllers identify qualified processors

# APEC Privacy Recognition for Processors (PRP)

## How the PRP works

- Program requirements that are relevant to purpose of processors (e.g. security safeguards and accountability measures)
- APEC CBPR-consistent “baseline requirements”
- Review and recognition process and role of Accountability Agents

# APEC Privacy Recognition for Processors (PRP)

## Enforcement

- Flexible approach, based on national laws
- No backstop enforcement by privacy authority required but possible, unlike the CBPR, where it is required
- Contract between Accountability Agent (AA) and processor
- Government oversight over the AA
- Government oversight via the APEC Data Privacy Subgroup and Joint Oversight Panel (JOP) if AA fails to perform its obligations
- Private right of actions and third-party beneficiary rights for privacy enforcement authorities
- Controllers remain responsible for activities of their processors

# APEC Privacy Recognition for Processors (PRP)

## Status of Implementation

- The PRP program is completed (substantive rules and procedural rules) and ready for use.
- Individual APEC Economies must now join the PRP and designate their PRP Accountability Agents before processors can be recognized.

# Expansion of the CBPR System: PRP and CBPR/BCR Interoperability

## The plans and the trajectory for expansion of the CBPR

- Prospects for creating a CBPR/PRP system with global reach
- Collaborating to increase interoperability between the CBPR and BCR Systems



# Contacts

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## **Joshua Harris**

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# Lunch Break

## *On Your Own*

**Main workshop will begin at 13:00**

# BUILDING A DEPENDABLE FRAMEWORK FOR PRIVACY, INNOVATION AND CROSS-BORDER DATA FLOWS IN THE ASIA-PACIFIC REGION

**Joint APEC Workshop**

**22 February 2016**

**13:00-18:00**

**Lima, Peru**

# Welcome and Scene Setting

**Josh Harris**

Director of Policy  
TRUSTe

**Markus Heyder**

Vice President and Senior Policy Counselor  
CIPL

# Session I

13:10

## **Promoting Privacy Protection and the Modern Information Economy through Accountability-based Information Management Programs**

- ❖ **Moderator: Martin Abrams, Executive Director, IAF**
- ❖ Andrew Reiskind, Deputy Chief Privacy Officer, MasterCard Worldwide
- ❖ Christine Runnegar, Director, Public Policy, Internet Society
- ❖ Huey Tan, Senior Privacy Counsel, Apple Asia



# ACCOUNTABILITY AND TRUST

February 22, 2016

# Getting Into It

- Fast acceleration from mainframe computers (1960s) to the Internet of Everything has changed the very nature of how privacy principles are put into play
- The first laws assumed individuals would police data governance through choices
- Today, accountability needs to complement choice to assure data is used and individuals are protected

# Why Accountability

- Accountability is the mechanism for assuring data stewardship
- It is driven by the purpose of the law, in a living manner
- It provides structure for privacy programs of all sizes



# History of Accountability

- 1980 – OECD Privacy Guidelines
- 2000 – Canada Private Sector Privacy Legislation
- 2004 – APEC Privacy Framework
- 2009 – Essential Elements of Accountability (Global Accountability Dialogue)
- 2010 – EU Working Part 29 accountability opinion
- 2012 – Canadian guidance on accountability
- 2014 – Hong Kong guidance
- 2015 – Colombia guidance
- 2016 – EU General Data Protection Regulation

# Essential Elements of Accountability

1. Corporate commitment to internal policies (codes of conduct) that link to external criteria – data protection law
2. Mechanisms to put those policies into effect, including identifying risk to individuals and mitigating those risks (privacy-by-design)
3. Internal monitoring to assure mechanisms work
4. Individual participation – transparency; consent (where effective)
5. Standing ready to demonstrate to a regulator on request and remediation where necessary

# Session II

14:10

## CBPR Deep-dive—Three short sessions on key issues and next steps

*(1) APEC Accountability Agents – Developing scalable CBPR certification Programs and effective Accountability Agent cooperation to benefit consumers and businesses.*

- ❖ Josh Harris, Director of Policy, TRUSTe
- ❖ Jose Alejandro Bermudez, Managing Director, Latin America, Nymity

## Session II

15:00

### **CBPR Deep-dive—Three short sessions on key issues and next steps**

*(2) Implementing the APEC CBPR across the Asia-Pacific Region – A status report and next steps.*

- ❖ **Moderator: Annelies Moens, Deputy Managing Director, IIS**
- ❖ Daniele Chatelois, Chair, APEC Data Privacy Subgroup
- ❖ Erick Iriarte Ahon, Senior Partner, Iriarte & Asociados
- ❖ Ted Dean, Deputy Assistant Secretary for Services, International Trade Administration, US Department of Commerce,

# Session II

15:00

## **CBPR Deep-dive—Three short sessions on key issues and next steps**

*(3) Towards Global Interoperability – Linking the EU Binding Corporate Rules and Other Accountability Programs to the CBPR.*

- ❖ **Moderator: Hilary Wandall, Associate Vice President, Compliance and Chief Privacy Officer, Merck & Co., Inc.**
- ❖ Caitlin Fennessy, Policy Advisor, International Trade Administration, US Department of Commerce
- ❖ Anick Fortin-Cousins, Program Director, Corporate Privacy Office and Privacy Officer for Canada, Latin America, Middle East and Africa, IBM
- ❖ Josh Harris, Director of Policy, TRUSTe

## Session III

16:10

***“More Companies will Begin to Seek CBPR-certification when Privacy Enforcement Authorities Affirmatively Support the CBPR.” Discuss.***

- ❖ **Moderator: Markus Heyder, Vice President and Senior Policy Counselor, CIPL**
- ❖ Jon Avila, Vice President, Chief Privacy Officer, Walmart
- ❖ Melinda Claybaugh, Counsel for International Consumer Protection, Office of International Affairs, Federal Trade Commission
- ❖ Jacobo Esquenazi, Global Privacy Strategist, HP Inc.
- ❖ Ben Gerber, Head, Data Governance & Strategy, Privacy, Security Strategy, DBS Bank
- ❖ Colin Minihan, Principal Legal Officer, Attorney-General's Department, Australia

# Session IV

**17:10**

## **Choice, Consent, Purpose Specification and Collection Limitation–Is the APEC Privacy Framework Ready for Big Data?**

- ❖ **Moderator: Markus Heyder, Vice President and Senior Policy Counselor, CIPL**
- ❖ Martin Abrams, Executive Director, IAF
- ❖ Blair Stewart, Assistant Commissioner, Office of the Privacy Commissioner, New Zealand
- ❖ Scott Taylor, Chief Privacy Officer, HP Enterprise

# Concluding Remarks

**Annelies Moens**  
Deputy Managing Director  
IIS



# BUILDING A DEPENDABLE FRAMEWORK FOR PRIVACY, INNOVATION AND CROSS-BORDER DATA FLOWS IN THE ASIA-PACIFIC REGION

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