HIDE

INFORMATION INTEGRITY SOLUTIONS

Malcolm Crompton

Trust, Transparency & data Governance: Challenges in the APEC privacy framework & the EU directive

APEC

HIDE Workshop on International data sharing & Biometric identification: Ethical Issues in an Asian & International Context

Singapore
2 July 2008

Why is ‘Privacy’ on the APEC agenda?

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Overview of APEC & its work on privacy

The problem:

- Complex business transactions makes privacy compliance more difficult
- APEC a very diverse region
- Many laws, many regulators
  - Hard for anybody to see the whole
- We need to act now
  - can we wait for extensive law change?
- Effective resolution of complaints
  - Cost to business; cost to consumer

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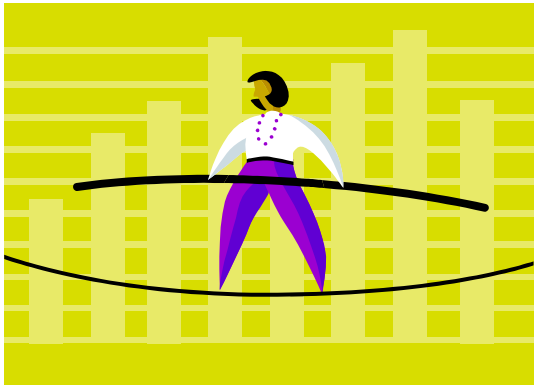
The objective:

- "Privacy is local; processing is global"
- How to keep the original privacy promise comprising:
  - Original economy law
  - Company privacy policy and other undertakings
  - Consumer choices
- In short: eliminate additional "country risk" for the individual



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Asia Pacific privacy law – summary position

Omnibus or sector law	Minimal privacy law
USA *	China #
Canada *	Singapore #
Japan	Malaysia #
Korea *	Thailand #
Hong Kong *	Mexico #
Australia *	Chile
New Zealand *	India
Taiwan	Indonesia
Russia	others

APEC Privacy Principles

* With enforcement

\# Law under consideration

The APEC Privacy Framework

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Nine APEC privacy principles

1. Preventing Harm – privacy protections should focus on preventing harm and misuse
2. Notice – clear & easily accessible (cf EU Dir Art 10, 11)
3. Collection Limitation – collect what's relevant in a lawful & fair manner after notice or consent (cf EU Dir Art 6)
4. Uses of Personal Information – for expected and compatible purposes, with consent, or where necessary (cf EU Dir Art 7)
5. Choice – where appropriate, provide clear, accessible mechanism to exercise choice (cf EU Dir Art 8, 14)

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Nine APEC privacy principles

6. Integrity – personal information should appropriately accurate, complete and up-to-date (cf EU Dir Art 6)
7. Security – appropriate safeguards to protect against unauthorized access, use, modification or disclosure (cf EU Dir Arts 16, 17)
8. Access & Correction – important (but not absolute) rights (cf EU Dir Art 12)
9. Accountability – controllers are accountable for compliance with all Principles and must use reasonable steps to ensure that recipients of personal information also comply

The APEC Insight

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APEC Privacy Framework & EU Data Protection Directive 95/46/EC

Similarities

- EU Privacy Principles generally map into APEC Privacy Principles although:
  - sensitive information not called out so specifically as EU Dir Art 8
  - right to object to processing not spelt out cf EU Dir Art 14
  - protection against ‘automated decisions’ EU Dir Art 15
- Significant variations in transposition into national laws

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APEC Privacy Framework & EU Data Protection Directive 95/46/EC

Differences

- Enforcement frameworks and approaches – process or outcomes?
- Transborder data flows
- The APEC insight...

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Insight in Principles 1 & 9

Principle 1

- Proportionality: focus effort on where harm greatest

Principle 9

- ‘Accountability follows the data’

Implementation

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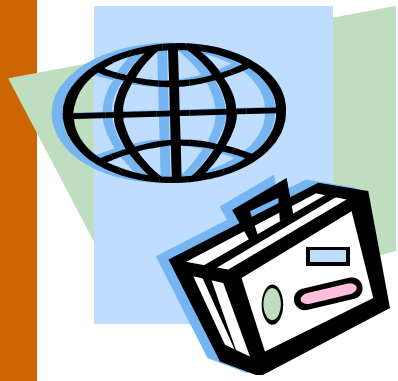
International

Part B:

"44. Member Economies should … facilitate cross-border cooperation in the enforcement of privacy laws

"46. Member Economies will endeavor to support the development and recognition or acceptance of organizations' cross-border privacy rules across the APEC region … that … adhere to the APEC Privacy Principles."



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LIMITED first steps on cross border

- APEC's ECSG Data Privacy Sub-Group addressing a small part of the problem in pathfinder projects
  - Consumer to business (& business to business) only
  - A volunteer group of APEC economies only
  - Cross-Border Privacy Rules only
  - For Businesses that opt in only
  - Hence, probably large companies only
- Expand later if successful
  - Start again if not successful ?!?
- Remember this integrates into wider Sub-Group work eg on information sharing & cooperation between regulators

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The APEC CBPR System

- CBPR system has 4 elements:
  - self-assessment; compliance review; recognition; dispute resolution & enforcement
- Pathfinder implemented through 8 projects
  - address the 4 elements
  - 9th project tests the outcomes
- 'Rules' not formal or imposed but when adopted will be enforced:
  - refers to internal procedures developed & used by business
  - must satisfy minimum requirements of APEC privacy principles

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The APEC Data Privacy Pathfinder

- The Data Privacy Pathfinder was endorsed by Ministers in Sydney in September 2007
- It focuses on achieving accountable cross-border information flows
  It requires: conceptual framework; consultative processes; practical documents; implementation strategies; and education and outreach
- Aim: to protect personal information no matter where in the APEC region the personal information is transferred or accessed

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Pathfinder pilots for CBPR

- Self-assessment guidance for organisations
- Guidelines for accountability agents
- Compliance review of an organisation's CBPRs
- Directory of compliant organisations
- Data Protection Authority & Privacy Contact Officer Directory
- Enforcement Cooperation Arrangements
- Template cross-border complaint handling form
- Governance model
- Cross-Border Privacy Rules International Implementation Pilot Project

Implementation:

As important as the rules

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“Layered Defence” essential

Privacy ► Control ► Trust ► Risk ► Accountability

Education

Law

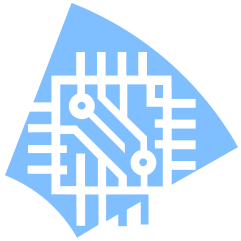
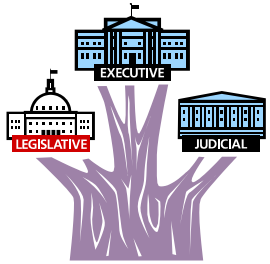
Technology

Governance

Safety Net

We can reduce the Trust Deficit



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Layered Defence tools

"**Business as usual**" – good practice & culture change for staff & citizen users

Law – maybe more, where risks particularly high (eg specific use and disclosure limitations, criminal penalties, special measures to ensure review before critical changes made); NOT just compliance

Technology – design limits information collected, what can be connected and who can see what

Governance – including transparency and accountability

Safety mechanisms for citizens when failure or mistakes occur

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Effective enforcement across borders

- Accountability the key
  - "original collector of the personal information remains accountable for compliance with the original privacy framework that applied when & where the data was collected, regardless of the other organisations or countries to which the personal data travels subsequently"
  - "The Australian *Dodo* Case: an insight for data protection regulation" where ACMA applied this principle

Crompton et al, World Data Protection Report, Vol 9, No 1, Jan 2009
www.iispartners.com/Publications/index.html#Other2009

- Regulator cooperation
  - Legal, Financial, Moral mandates

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