INFORMATION INTEGRITY SOLUTIONS

# International Conference on the Amendment of Personal Information Protection Act

**Organised by: BSA | The Software Alliance**
**Co-organised and sponsored by: JEITA and JISA**
**Supported by: ACCJ**

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# Overview

- Rapidly escalating data flows between jurisdictions and two of the emerging responses:
  - The EU's Binding Corporate Rules (BCR)
  - APEC's Cross Border Privacy Rules (CBPR)
- Running a data commissioner's office
- Implications for Japan

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# APEC CBPR
# &
# EU BCR

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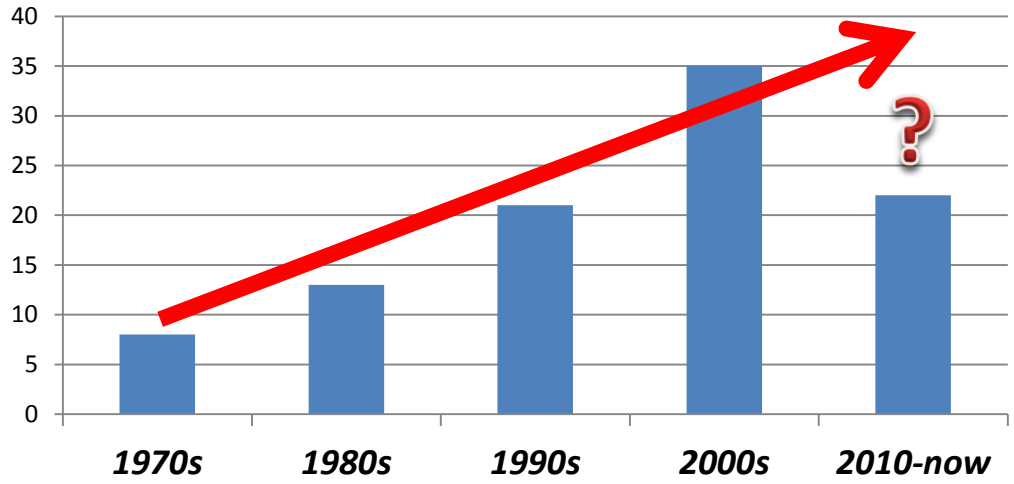
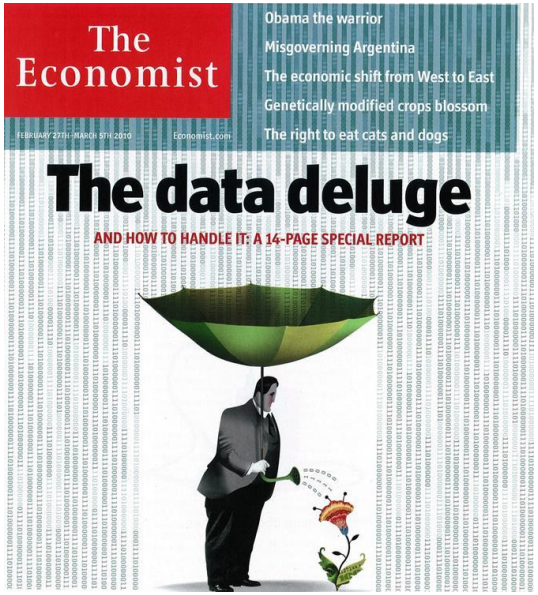
# The case for a global interoperability framework

- Privacy laws are proliferating




- Cross-border data flows are accelerating
- Protecting personal data requires international cooperation
  - EU – Largest economic entity in the world
  - APEC – 40% of world's population, 54% of world's GDP, 40% of world trade

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# Towards global interoperability: Steps in the right direction!

- Regional, not global solutions, so far
- Different scope of operation:
  - CBPR – transfers between participating companies in participating Economies (geography)
  - BCR – intra-company transfers (corporate structure)
- IIS Comparison and Assessment September 2013

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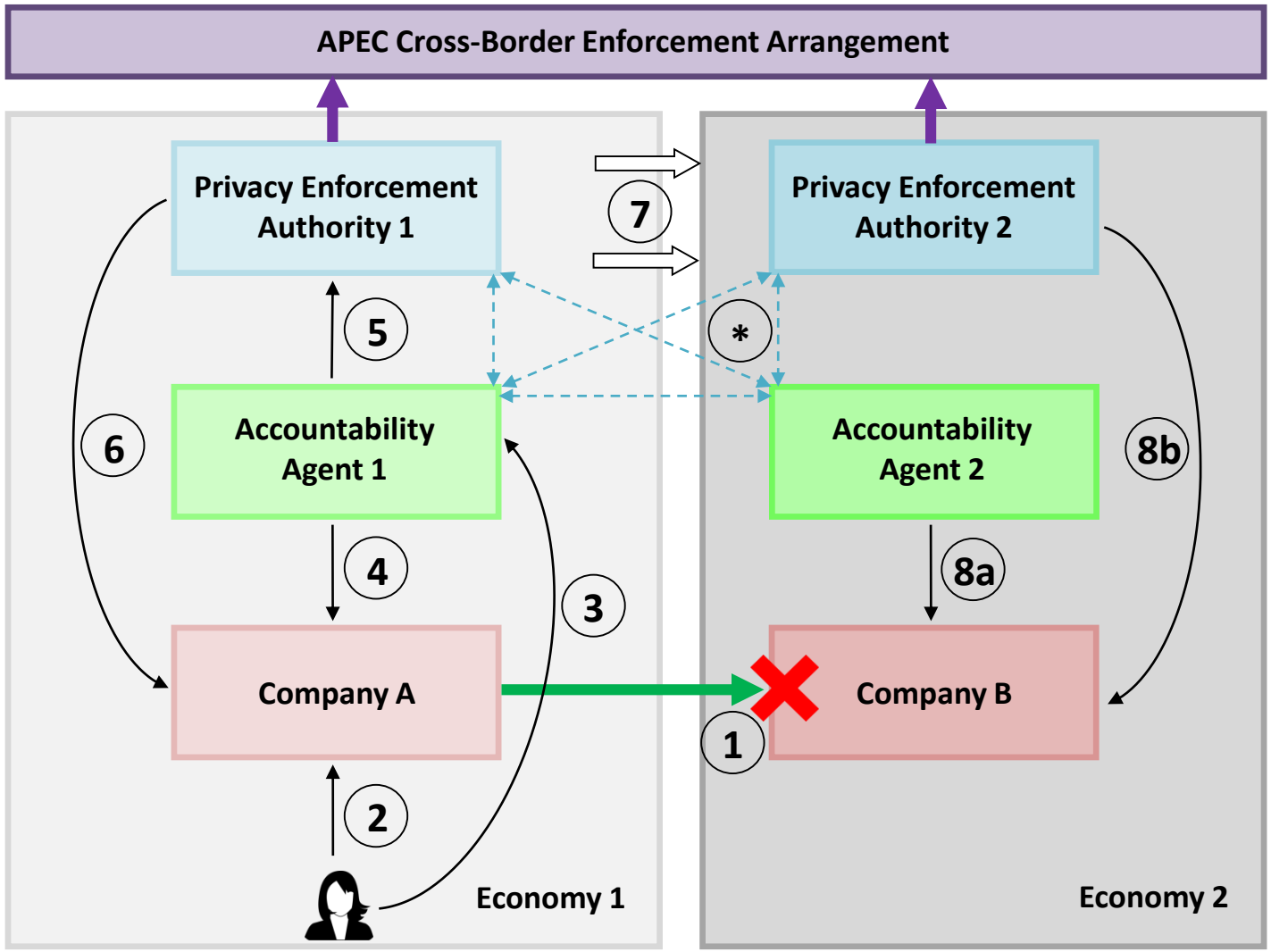
# APEC Cross-Border Privacy Rules System




1. Personal information is transferred to Company B and a privacy breach occurs

2. Complain directly to Company A

3. If no resolution, complain to AA 1

4. Enforcement by AA 1

5. If no resolution, escalate to PEA 1

6. Enforcement by PEA 1

7. If no resolution in Economy 1, refer complaint to AA 2 and/or PEA 2 in Economy 2

8a. Enforcement by AA 2

8b. Enforcement by PEA 2

* Cooperation where appropriate and possible

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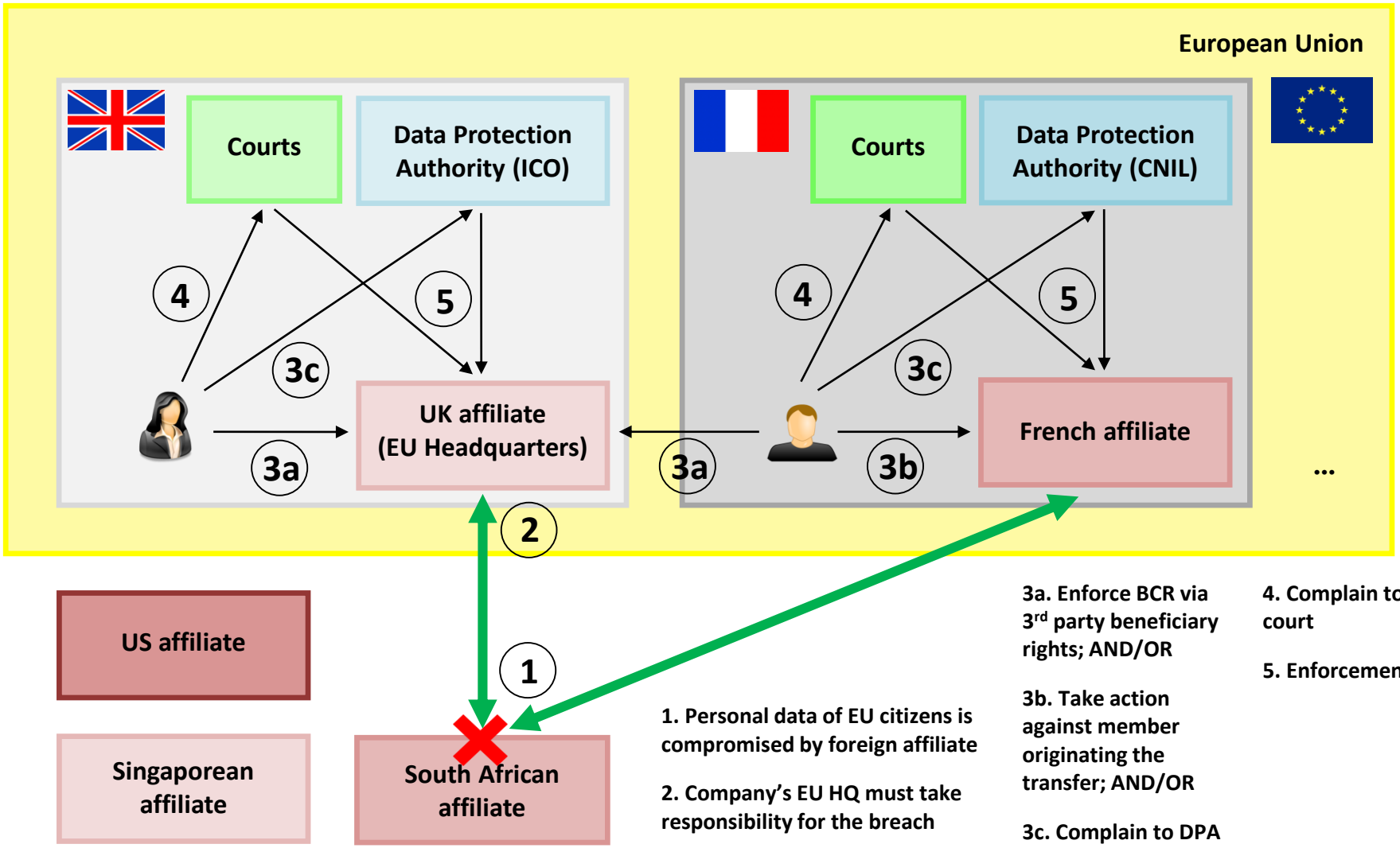
# EU Binding Corporate Rules



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# Room for optimism!


- Increased dialogue between EU's Article 29 Working Party and APEC's Data Privacy Subgroup
  - For example, the jointly produced referential
- The two systems are remarkably similar
  - In intent
  - In the practical effects of the requirements
- A sound basis for a globally interoperable framework

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# Comparing BCR & CBPR – Key elements to consider

1. A baseline level of **privacy protection that follows the data**
2. Expressed through **internal rules and policies**
3. Enforced via **accessible redress mechanisms** when something goes wrong
4. Demonstrated through **initial certification and ongoing audit**

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# 1. Privacy protection...

- EU and APEC have many common principles:
  - For example fair and lawful collection, purpose specification, security, data quality
- EU-specific:
  - Retention limitation
  - Restrictions on processing of sensitive information
  - Right to object to automatic processing
    - All these are compatible with the APEC framework

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# 1. … that follows the data

- Common features:
  - Only transfer data to other organisations that will apply the same protections
  - One entity accepts responsibility
  - Mutual assistance and cooperation between Data Protection Authorities (DPAs)/Privacy Enforcement Agencies (PEAs) (in the EU and APEC respectively)

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# 2. Internal rules and policies

- Common features:
  - Application to group entities and third party processors
  - Designate individual(s) to be responsible for privacy within organisation
    - Privacy training program for employees
- EU-specific:
  - Explicit requirement for employees to be bound by internal rules and policies

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# 3. Redress mechanisms

- Common features:
  - Organisation has formal process to handle privacy complaint
- EU enforcement avenues:
  - Judicial remedy
  - DPA
- APEC enforcement avenues:
  - Accountability Agent and dispute resolution process
  - Escalate to PEA where necessary
  - Private right of action (depending on local law)

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# 4. Demonstrate compliance

- Common features:
  - Participation requirements assessed and certified by relevant body (DPA / Accountability Agent)
  - Regular compliance monitoring

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# An Australian perspective

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# Australian Privacy Law

- Flexible, enforceable, adaptable to BCR & CBPR schemes
- Privacy Act 1988 – updated in 2014
- 13 Australian Privacy Principles
  - Similar to APEC and EU principles – a good platform for BCR & CBPR
- Privacy Commissioner has enforcement powers – complaints, investigations, enforceable undertakings
- Codes can be used to align compliance with CBPR if necessary

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# Implementing the law – Our approach

- My term as Privacy Commissioner 1999 – 2004
- Approach based on nature of the law
  - high-level, general principles
  - not prescriptive 'black letter' law
- A range of strategies needed to achieve our regulatory goals.

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# Implementing the law – Our approach cont.

- How we went about it:
  - Strategic Plan – set approach to regulation
  - Creating a culture that respects privacy
  - Partners in developing and promoting privacy solutions
  - A clear and balanced voice on privacy principles
  - A comprehensive understanding of current community perceptions of privacy
  - Risk management framework
- Tougher sanctions  used sparingly for egregious matters

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# Implications for Japan

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# Considerations when framing Japan's law

- Protect the Japanese people in the way they would expect
- Global interoperability crucial to developing a data services export industry
  - The rest of world expects its data to be equally well protected in Japan
  - Design for compatibility with global frameworks
    - Every difference could be very costly

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# Making global interoperability work

- Focus on what will make it easy for business to participate in both CBPR and BCR
  - Japan already a participating economy in CBPR
  - But improved enforcement arrangements desirable
    - BCR – accountability to an EU enforcer via a parent company or subsidiary
      - Could Japan's regulatory framework accommodate and work with this requirement?
    - CBPR – Uses local privacy enforcement authority
      - The number of privacy enforcement authorities in Japan seen as a challenge to outsiders

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# What now?

- Opportune time for Japan:
  - Vision – Declaration to be the World's Most Advanced IT Nation (2013)
  - Nationally – legal and institutional privacy reform
  - Internationally – participation in CBPR system
- Interoperable and enforceable frameworks essential to effective data services exports
- BCR and CBPR coming together and both have something to offer.

# Questions?

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