

International data sharing and Biometric identification: The Ethical Issues in an Asian and International Context

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

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Every day, an increasing proportion of the personal information about each of us moves across borders and so into different legal jurisdictions. Business is initiating this to improve service quality and reduce costs to customers; governments are doing it for similar reasons and to improve border controls, policing and some of their other functions; citizens and customers are initiating transfers when they make a purchase online or wish to travel overseas.

The European Union has addressed the safe transfer of personal information across borders within the Union as part of EC Directive 95-46. The Directive also establishes a framework intended to apply to the movement of personal information outside the Union based on whether there is 'adequate' privacy protection for the information, including through Binding Corporate Rules. Only a very limited number of jurisdictions outside the EU have been found to have 'adequate' privacy law and very few companies have been able to obtain approval for Binding Corporate Rules.

APEC is the world's largest regional grouping and the most recent to adopt a privacy framework. It is now putting in place a mechanism to allow the safe movement of personal information between participating APEC jurisdictions. Its initial focus has been on ensuring the accountability of companies for complying with Cross Border Privacy Rules that meet the requirements of the APEC privacy framework, combined with workable redress mechanisms when a problem arises.

The EU BCR and APEC CBPR concepts are very similar in theory but differ considerably in practice. Both are promising but yet to deliver at any scale. In theory at least, they could be the starting point for finding ground for a truly global framework for allowing the safe movement of personal information between jurisdictions.

There are many examples of effective federations of states and provinces into nations that allow safe movement within the federation. Stronger mechanisms are constantly being developed for safer movement of individuals and finance between jurisdictions. These examples suggest that there is no reason to believe it is any more difficult to do the same for personal information.

The recent enforcement action by the Australian Communications and Media Authority against Dodo Australia Pty Ltd offers promise for how to enforce the requirements of a privacy framework.

The benchmark test is simple: individuals should not be exposed to any additional country risk simply because another party has moved personal information about them into another jurisdiction unless they are in a position to make a fully informed decision to allow it.

Achieving the benchmark will require rebalancing so that equal attention is paid to enforcement as is paid to the framework and rules.