



**Asia-Pacific
Economic Cooperation**

**Final Report of the Technical Assistance Workshops on
International Implementation of the APEC Privacy
Framework**

**Electronic Commerce Steering Group
APEC Committee on Trade and Investment**

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Executive Summary

The Technical Assistance workshops held during the Peru year of 2008 shared four themes: an exploration of the diverse cultures of privacy in the APEC region; information sharing between member economies about developments in privacy and data protection throughout the region; increasing awareness and understanding of the APEC framework and the benefits of its adoption in emerging economies; and furthering the work of the Pathfinder projects, in particular by promoting participation in the work of those projects by a broad range of stakeholders.

The first workshop, held in February, provided an opportunity for Asian and Latin American economies to discuss in detail the nature of privacy in their cultures. The Asian economies emphasized that privacy is not a traditionally accepted value in the agrarian and communitarian cultures of Asia, but that as the demographic has become increasingly urban and as new technologies have been adopted, Asian economies have taken a greater interest in the protection of their personal information. Representatives of Latin American economies discussed the formation of a culture of privacy in the region and the different stages of development of their infrastructures for protection of privacy and data.

The workshop also included in depth discussion focused on outsourcing of data processing functions, and the obligations of both outsourcing companies and processing service providers. A recurring theme was that privacy is a local, culturally based value, but that the obligations related to the way in which data is managed and protected must be honored wherever it travels in the world and by whoever provides processing services. Companies seeking processing services must look for vendors possessing capacity to meet those obligations and the ability to carry through if they are not met. They must also choose services located in economies with the legal infrastructure necessary to support contract, labor and data protection laws. In exchange, providers of outsourcing services must demonstrate trustworthiness and competency to manage the requirements that come with the data. Economies must build capacity for this by educating industry and government and assuring the efficacy of local laws.

The session also considered the advantages of APEC adoption for fostering economic growth, including expanded trade and investment for economies and job creation. It also highlighted the role of the APEC principles in providing a starting point for economies in the early stages of developing their laws and infrastructure.

The final focus of the workshop was discussion of the Pathfinder projects and their potential to build capacity in emerging economies, both in creating governance and establishing mechanisms for cross-border enforcement. The discussion emphasized the importance of the Pathfinder to economies establishing requirements, accountability, and enforcement, for cross-border transfer of data, even as economies explore their own local requirements and develop domestic governance. The participants emphasized repeatedly the importance of the Pathfinder in testing the practicality of concepts, tools, accountability and enforcement mechanisms. They also noted the need for broad participation in the work of the Pathfinders and the urgent need to move ahead with the work.

The Second Workshop built upon the work of the first. Following on to the discussion of the diverse cultures of privacy in the region that took place in the First Workshop, this meeting also provided an opportunity for participating economies to share information about work on privacy ongoing in legislatures, business organizations, consumer groups and civil society. Finally, the Second Workshop provided an opportunity for broader outreach to stakeholders, and included participation of, for example, a representative of the Organization for Economic Cooperation and Development and of the Data Security Council of India, both of whom discussed their interest in the work of APEC and their desire for collaboration and idea sharing going forward. As in the case of the February meeting, civil society also assumed an active role; meeting participants committed to continuing civil society participation.

The Second Workshop introduced a new theme of “corporate social responsibility,” considering the value of such efforts within companies. Participants discussed the value of said efforts to companies’ broad corporate strategy. Presentations also focused on the details of specific initiatives related to privacy and data protection undertaken by companies. The panel reflected on the value of corporate social responsibility efforts to economic stability, competitiveness, encouraging positive relationships with consumers and fostering sustainable economic growth.

A key element of the August meeting was responding to the message delivered from the First Workshop about the critical importance of the Pathfinder project work. Progress on specific Pathfinder projects was reported on and goals for completing the balance of the work were laid out. An important aspect of the Second Workshop was the use of breakout groups to provide participants with the opportunity to engage in focused discussions on the Pathfinder projects. The results of the breakout discussions brought to the fore the perspectives of businesses, consumer organizations, and regulators on the work of the Pathfinders projects thus far and additional issues that remain to be resolved as the project work continues.

Report of the First Technical Workshop on International Implementation of the APEC Privacy Framework, 2009

“Data Privacy & E-Commerce: Fostering Economic Growth”

19-20 February 2008

Introduction

The first technical workshop was held in Lima, Peru on February 19 and 20 of 2008. Approximately two hundred attendees included delegates from 15 economies.

The themes and goals of the meeting built upon the findings of the Data Privacy Subgroup at its meeting in Canberra, Australia in September 2007. At that meeting, the Subgroup agreed to a Pathfinder program of projects to provide resources for the adoption of the APEC privacy principles and to test its practical implementation.

Purpose of the Workshop

The purpose of the workshop was to foster a collaborative environment through an enhanced understanding of the diverse cultures of privacy among APEC member economies and to highlight the manner in which the APEC Framework can address privacy in the region in a manner that is effective and that respects the differences across the region.

The work of the workshop was further intended to provide information and resources to emerging economies about the benefits and opportunities provided by APEC adoption. Specifically, the workshop included sessions focusing on the needs of organizations seeking or providing processing services in the APEC region.

Finally, the workshop goals included encouraging the involvement of economies, particularly emerging economies, in the Pathfinder projects and to further the progress of those projects.

Structure of the Workshop

The workshop began by providing an opportunity for Asian and Latin American economies to discuss their culture of privacy and the governance structure for privacy. It provided time for group discussion, including audience participation, about the manner in which the APEC Framework could provide effective privacy protection and accountability across the region in a manner that takes into consideration and respects the diverse perspectives of individual economies.

The first day also included two panels that focused on the requirements of organizations seeking or providing processing services within the APEC region.

The second day examined in detail the manner in which adoption and implementation of the APEC principles may foster economic growth. Attention was then turned to the Pathfinder projects and how they might be used to build capacity for privacy governance under the APEC Framework. Before the workshop closed, the Pathfinders were again the subject of discussion, this time to consider the findings of the workshop and the implications of the workshop's findings on future work of the Pathfinder projects.

Summary of Proceedings

Richard Bourassa, Acting Chair of the Electronic Commerce Steering Group opened the workshop, welcomed delegates and introduced Mr Guillermo Thornberry, Chairman of the Board of the Peruvian Telecommunications Regulatory Agency, OSIPTEL.

Mr Thornberry welcomed the delegates. In his remarks he noted that the large capacity of computing brings about widespread reorganization that raises policy issues that must be considered. He expressed the hope that meeting would identify the best policy options for economies. He noted that there are several variables at play - the differences in economic development, capacity, education and health care among APEC economies - but that there is much to be learned by identifying work in other economies that can be useful for our own economies.

He observed that the meeting is not an end in itself, but an instrument to transform and improve the lives of people, and that the areas for policy decisions included not only economic growth but social issues. Mr Thornberry stressed the importance of continued development of the communications infrastructure, and the need to balance attention to social concerns with efforts to attract investment, as both are critical to serving consumers and the needs of those who do not now have access to technologies.

Richard Bourassa talked about the history of the APEC Privacy Framework development, noting that the Principles, inspired by the Organization for Economic Cooperation and Development (OECD) Guidelines and national legislation, were agreed upon in 2004. In 2005 the Data Privacy Subgroup began work on implementation of the principles, holding workshops to allow an open exchange of views between a wide range of stakeholders and economies. At those meetings delegates discussed the need to position privacy in an APEC context, and to examine how to maximize benefits of good privacy protection for consumers, government and business.

He reviewed the workshop's proceedings and topics for discussion, and pointed to the Pathfinder as a mechanism for harvesting what is learned from the workshop.

Session I: Asian Culture of Privacy

Session I, chaired by Yoshio Araki of IBM, Japan included remarks by Mr Duong Hoang Minh, Viet Nam E-Commerce and Information Technology Agency, and Dr Hiroshi Miyashita, Chief, Cabinet Office, Government of Japan.

Mr Araki opened the panel by noting that Asian delegates had voiced the need for an opportunity to explain to the APEC participants the differences between the concept of privacy in Asian economies from the way the subject is viewed in the Americas and Australia, and that this panel was intended to respond to that concern.

Mr Minh of Viet Nam spoke first, noting that concepts of personal information protection and data privacy are still new in Viet Nam and that knowledge and understanding of the issues in the general public and businesses are limited. He highlighted the legal framework on data privacy as found in Viet Nam's Civil and Criminal Code, as well as in its recently enacted Law on E-Transactions and Law on Information Technology.

Dr Minh discussed the low number of websites that post privacy policies, and the growing awareness of the Vietnamese people about privacy and personal data protection, particularly as a concern that personal data might be compromised when engaging in e-commerce. Finally he talked about approaches to enhancing personal data protection in Viet Nam, citing education of the public and businesses on issues of privacy and data protection and continuing development of domestic approaches to privacy legislation, including perfecting the legal framework on data privacy and developing the National Trustmark Organization to attain international recognition.

Dr Miyashita highlighted the way in which the concept of privacy has changed significantly in Japan. He discussed the communitarian nature of Japanese society, noting that when Japan was primarily a rural economy privacy connoted selfishness and an unwillingness to participate for the benefit of the group. As the culture has developed into a more urban one, Japanese citizens have expressed greater concern about privacy, as illustrated in public opinion polls that identify the wide ranging areas of personal information one does not wish to disclose.

Mr Miyashita discussed the Japanese Act on Protection of Personal Information and the manner in which it encourages protection of personal information by business. He noted the advance in information privacy protection in Japan, as illustrated by a decrease in data breaches and increased adoption of the JIPDEC Privacy Mark and the PD Mark.

Session II: The Latin American Culture of Privacy

Erick Iriarte, Alfa-REDI, Ivan Ferrando, Jorge Navarro, ALADI-Mexico and Lina Ornelas, Federal Institute of Access to Information (IFAI-Mexico) were participants in this panel, moderated by Luis Pacheco of OSIPTEL.

Erick Iriarte opened his remarks by observing that right now users are more interested in content than in privacy. He said that there are issues of privacy compromises due to access by government to information. He noted that many Latin American economies have already put regulations in place about privacy and that there is some similarity among the views of Latin American countries related to civil rights. The key now is to find a basic platform and points of harmonization across the region. Harmonization work is being done in the context of the eLAC25-eLAC78, and in the Ibero-American Data Protection Network. Work will continue toward the goal of a harmonized regulatory framework for the whole region by 2010, taking into account legislation, agreements, and treaties.

Mr Ferrando of Peru stated that personal data protection acts have been passed in economies such as Mexico, Argentina and Colombia. He discussed the Declaration of the XIII Ibero-American Summit that promotes directives aimed at uniform legal criteria for protection of personal information within the economic region and the need to evaluate the APEC Framework for this purpose. He noted that Peru's lack of a data protection law places it at a comparative disadvantage among economies, but that a draft bill is under consideration. His discussion highlighted the issues raised by the adoption of new technologies, and the interest of law enforcement in data flows and access to data for law enforcement purposes and its impact on data retention practices.

Mr Navarro discussed the Spanish and European roots of privacy and data protection in Latin America. He noted the similar social and political problems in the region, particularly those of developing economies and the need for transparency to promote democratic systems. He highlighted global consensus for privacy and data protection standards but said that there are concerns in Latin America about which model for protection should be adopted, pointing to the EU requirement for unambiguous consent as an important difference with the APEC approach. Mr Navarro reviewed in detail the extensive privacy and data protection regime in Mexico, and noted the advances in Chile and the work in this area in Peru.

He discussed extensively the need for regional harmonization, and reiterated the concern in the region about determining which approach would best strengthen economies, noting in particular the work of the Data Protection Ibero-American Network.

Finally he highlighted challenges going forward as promotion of self-regulatory regimes, capacity building, inclusive law-making processes and adequate inter-government agency strategies.

Ms Ornelas opened her remarks by observing that in Latin America the culture of privacy has not been created yet, that other concerns are more pressing, and that education is necessary. She noted that in Mexico there is no specific law on privacy or data protection but that there are regulations aimed to protect private life and personal data. These are found in Mexico's

Constitution, its civil code, banking and tax laws, and consumer protection laws. She also discussed the protections provided in the Federal Freedom of Information Act that protects personal data collected by government and guarantees treatment, including access and correction by individuals of information about them. She said that while the culture of privacy is not extensive, there is an opportunity to create conditions to protect privacy in all sectors, and that the commercial sector has taken a step forward to protect their clients through use of trust marks, codes of ethics, and privacy policies.

Group Discussion

The group discussion made important points related to the difference between harmonization of laws within regions and establishment of a framework for cross-border transfers that allows for accountability and enforcement. The APEC principles have the potential to provide the minimum requirements for those transfers across the region no matter what decisions about harmonization are arrived at.

Discussion also focused on the utility of APEC principles as economies work toward adoption of domestic laws, by providing a framework for thinking about requirements and a regional reference point.

Session III: Obligations of Outsourcing Companies

Mark MacCarthy of Visa; Marty Abrams of the Center for Information Policy Leadership; Phillipa Lawson of the Internet Policy and Public Interest Clinic of the University of Ottawa; and Katitza Rodriguez of EPIC spoke in Session III. Alejandro Moscol of OSIPTEL served as moderator.

Mark MacCarthy reviewed the Visa system, how it functions, who participates in the system and how information flows. He noted that financial information systems must have regulations to flourish. They cannot be free of government oversight but that oversight must be balanced.

His comments emphasized that with increases in data breaches, data security will become of increasing importance to companies seeking outsourcing services. If breaches continue and if data is not safe and secure, the systems will not grow as they should. He encouraged the adoption of data security rules that are process oriented, that impose a generalized obligation for security and that provide for notification of consumers so they can protect themselves from harm. Security, he said, is a cross border problem - not a only a local one - as data breaches affect people across borders and data thieves move to places where security is not as stringent.

Martin Abrams talked about privacy as a local concept, but remarked that data flows globally and that there is a universal obligation to meet the promises made with respect to the data. He noted that transferring of liability is a contentious issue in outsourcing, but that within the APEC framework the issue becomes accountability rather than liability.

He further highlighted that companies outsourcing services should look for vendors that understand how to put in place the appropriate security safeguards and limitations on information use, have the capacity to do so and the character to follow through. Economies must have a legal structure that assures that contractual obligations are honored, an ability to hold employees accountable for their actions and participation in global governance.

Phillipa Lawson and Katitza Rodriguez brought perspectives of civil society to the discussion. Both emphasized the concern of consumers about privacy, particularly in the context of outsourcing because of inherent vulnerabilities, potential access by local governments and the fact that data is more exposed because it is in more than one set of hands.

Ms Lawson talked about the role of robust data minimization and retention policies in enhancing data security and the importance of avoiding data transfers to jurisdictions that lack due process guarantees. She called for a stronger standard of consumer notification and consent when outsourcing is involved than that set out in the APEC principles to enable consumers to play a

role in managing risk. Ms Lawson also talked about breach notification as a means of helping consumers avoid harm. She encouraged adoption of strong privacy laws by all APEC economies, and development of cooperative cross-border enforcement and consumer redress mechanisms. Her remarks also discussed the importance of security through encryption, anonymization or pseudonimization, as well as technical security safeguards and business process and employee safeguards.

Ms Rodriguez noted that privacy is not simply a cultural value, but is set out in the declaration of human rights. She pointed to Canada's law as providing a good level of protection while promoting the APEC guidelines. She saw APEC as a baseline that can serve as a starting point and emphasized the importance of the APEC accountability principle as important to assuring higher privacy standards.

Session IV: Obligations and Requirements of Processing Service Providers

Jennifer Stoddart, Privacy Commissioner of Canada, moderated this panel, which included Nigel Waters, of Privacy International; Joseph Alhadeff, speaking in his capacity at the US-India Business Council; and Scott Taylor of Hewlett-Packard

Commissioner Stoddart opened the session by posing several questions -- What is the role of data processors in supporting privacy standards?, How does the APEC framework make a difference in this task? How do we deal with issues of quality administration and enforcement of privacy rules in APEC and non-APEC economies?

Nigel Waters noted that civil society organizations welcome any developments that encourage companies to keep their privacy promises no matter where data is processed. He noted that Australian consumers are uncomfortable with outsourcing overseas, and sees the APEC principles as a floor, not a ceiling for protection.

He assumes that many economies will continue to have standards for protection that are higher than APEC standards. He talked about the need for assessments of adequate protections for data within jurisdiction and to focus on cross-border enforcement of complaint handling. He also suggested that the combined efforts of business and civil society to push for holding less responsible companies to high standards could be effective and benefit business.

Joseph Alhadeff talked about the experience of India in establishing a mechanism to assure privacy protections. He mentioned the importance of early efforts at capacity building and promoting a better understanding of the roles of industry and government. He said that it was important to examine existing local laws, work on filling gaps in legislation, and raise the level of participation of stakeholders. He cautioned against expecting perfect results too soon, and emphasized that creating a trusted environment for privacy and data processing is an iterative process.

Scott Taylor brought the perspective of a data processor to the conversation, stating that Hewlett Packard focuses on many factors before putting a service provider in place. It selects the service provider based on trustworthiness and competency to manage to the requirements that come with data. In determining the appropriateness of a particular economy, it considers geographic location, nature of the workforce, local laws, political stability, nature of the labor laws and infrastructure.

The presentation noted trends in outsourcing observing that data controllers increasingly raise privacy as an issue in outsourcing deals and that data controllers increasingly attempt to transfer responsibility to the processor. He also commented on the increasing complexity of the question of what constitutes personally identifiable information, the lack of understanding of the global landscape, and that data controllers increasingly look to processors for guidance.

He noted that data controllers are responsible for informing the data processor of the requirements that come with data and for retaining accountability for the data.

Closing

David Loukidelis closed the day by drawing together key themes and observations.

Session V: APEC Principles and Fostering Economic Growth

Session V included panelists Richard Bourassa, Acting Chair ECSG and Director, International Policy E-commerce Branch, Industry Canada; Peter Cullen, Chief Privacy Strategist, Microsoft; and Harry Chang, Chief of Promotion, PROINVERSION. Julio Cesar Vega, Secretary of Economy's Office, Mexico, served as moderator.

Richard Bourassa outlined a history of the work to develop the APEC Privacy Framework and principles. He pointed to accountability as the principle at the core of the discussion of cross border enforcement rules. He also noted that the nine APEC privacy principles apply both in a domestic environment and internationally.

He discussed the Pathfinder projects as a way of giving visibility to issues of data protection and as a work program to keep efforts focused and moving forward. He noted the importance of cross border cooperation - government-to-government, regulator-to-regulator, and trustmark-to-trustmark, as well as permutations of these. Setting the stage for cooperation is key, as is avoiding unnecessary administrative and bureaucratic burdens.

Mr Bourassa noted that adoption of APEC principles can foster expanded trade and investment for economies, and benefits for industry that include branding and public recognition for sound privacy practices, and a harmonized, interoperable, predictable approach to privacy protection. He envisioned strengthening cooperation in the Pathfinder projects as among next steps.

Peter Cullen suggested that the discussion may be focused too much on harmonization of principles. He observed a fairly high level of harmonization, but noted a gap of enforcement capability and stated that the focus belongs on repairing that gap to assure trust. He also highlighted the effect of the presence of a criminal element that does not respect boundaries and that makes consumers wary of ecommerce. Addressing this is critical to growth of ecommerce. He talked about the importance of shared accountability so that the way information is handled does not depend upon which economy it flows to. Information will move globally but only if it does so in a trusted manner.

He further emphasized the importance of implementation of the APEC principles as the ultimate goal, and that the principles can serve as a starting point for economies developing a legal structure for data protection.

Harry Chang reviewed the state of foreign investment in Peru, the development of the economy's outsourcing business and the potential of the sector to promote economic development and create new jobs. He talked about the commitment of public and private sector institutions in creating new business in this area. He discussed the range of benefits these efforts bring to the economy -- increase in investment, new jobs, development of the labor force, ongoing professional training, export of services, improved work conditions. He discussed Peru's development of its Personal Data Protection Law intended to articulate a legal framework to guarantee protection of personal data, create a reliable environment for fluid data transfer, and increase Peru's competitiveness in outsourcing. The proposed law was drafted to meet the criteria of the APEC Principles for privacy protection, security and cross-border enforcement.

Session VI: Using the Pathfinder Protects to Build Capacity in Emerging Economies

Nakorn Serirak, Office of the Official Information Commission, Thailand, and Isabel Davara, Chair, Latin America Electronic Commerce Committee, Section of Science and technology, American Bar Association Mexico, spoke on this panel chaired by Malcolm Crompton, Information Integrity Solutions, Australia.

Malcolm Crompton opened the session by reviewing the nine Pathfinder projects and their goals.

Dr Serirak surveyed the key laws governing data practices in Thailand, both as related to government and protection of personal data. He introduced the workshop participants to Thailand's Official Information Act of 1997, which guarantees the people's right to have full access to information. The goals of the act are to establish accountable and transparent government and to establish guidance about state agencies collection, processing, and use of citizens personal information, and the obligation to provide appropriate security for data. He also discussed Thailand's draft Personal Data Protection Act, which enforces rules about data processing of processors whether they are individuals, organizations or state agencies with business or commercial objectives.

Dr Serirak then spoke at some length about Thailand's plans to increase awareness of the business community, consumers about the APEC Framework. Thailand has developed an extensive project involving conferences, implementation surveys and articles, newspapers, journals and websites to increase public awareness.

Isabel Davara spoke about the APEC principles and the importance of the Pathfinder projects to reaching the goals of safety and trust for information flowing across the region. She highlighted accountability, enforcement and clear procedures to be of particular importance, and noted the need for balance and flexibility in implementation.

Session VII: Pathfinders Going Forward

Session VII provided an opportunity for discussion of the Pathfinder projects. The speakers, Robin Layton, Department of Commerce; US, Heather Shaw, International Chamber of Commerce; US, Joseph Alhadeff, Vice President Global Public Policy and Chief Privacy Officer, Oracle, US; Danielle Chatelois, Manager, Privacy Policy, Electronic Commerce Branch, Industry Canada; Julio Cesar Vega, Ministry of Economics, Mexico; David Loukidelis, Information and Privacy Commissioner, British Columbia, Canada, were moderated by Colin Minihan, Chair of the Data Privacy Subgroup.

The discussion focused on the need to begin work on the pathfinders as a critical first step toward practical implementation. The panel talked about the importance of moving forward, warning against a fear that initial outcomes will not provide a perfect model for implementation. Rather, the goal of the pathfinders is to begin testing concepts, mechanisms and tools, and to engage emerging economies less familiar with APEC in the process, with a goal of a non-bureaucratic, lightweight system. One panelist commented that the more streamlined and uncomplicated the compliance mechanism, the more law enforcement and regulators are freed to pursue bad actors.

Panelists emphasized that as work begins, it will be important to increase the number and diversity of companies and consumer groups participating.

It was specifically noted that if the Pathfinder project and the APEC privacy principles were to be successful, they must work for all parties and all economies.

A considerable amount of discussion focused on the role that the Pathfinder projects could play in the important effort to educate consumers, business and policymakers about APEC. It was suggested that a series of documents, including a set of answers to frequently asked questions, be developed to hone definitions and clearly articulate complex concepts with which those new to

the APEC framework may be unfamiliar. This work could also further the effort to publicize APEC to the outside world and to APEC ministers. Audience questions about specific terms, particularly the meaning of “cross border privacy rules” highlighted the need for this work.

Other concepts that panelists thought important to explore are accountability and how it works, accountability agents, self assessment, and jurisdictional limits, the need for an enforcement mechanism that reaches across borders in the APEC region, the and the role of supporting local legislation.

It was emphasized that the APEC process was not an effort to lower privacy standards in any local economy, but to deal with issues that arise from cross border flows of data.

Conclusions from the Workshop

David Lemor, Executive Director of PROINVERSION - the Investment Promotion Agency of Peru - delivered closing remarks focused on the tremendous opportunity for economic growth, trade, investment, and ecommerce afforded by telecommunication and information technology for all APEC economies. He highlighted PROINVERSION's work to continue those trends and the successful efforts to develop a sector of call center work in Peru. He also emphasized efforts to coordinate passage of a law to provide appropriate treatment of data and regulations that fosters continued development in the sector. He noted the need for an international regulatory framework.

Guillermo Thornberry's remarks looked to the broader issues of societal changes that come with the growth of telecommunications an information technology. This transformation must be addressed in a responsible manner so as not to deepen disparities in our world of economic disparity.

He urged that while we must consider the moral, philosophical and human issues we can't put a brake on technology. He discussed the need to analyze and understand the data protection laws of economies, and strengthen institutions involved in monitoring and enforcement so that they can be independent and impartial, objectives and technologically efficient.

There is tremendous capacity for growth, but growth depends upon the ability of the economies to guarantee the security of information, and the capacity to develop infrastructure.

He posed three questions that must be answered:

- What kind of information society do we want?
- What are the characteristics and features of the transition to the information society?
- What policy measures should we take in the near future?

He then invited participants to return later this year to continue deliberations.

Report of the Second Technical Assistance Workshop on International Implementation of the APEC Privacy Framework, 2008

“Data Privacy & E-Commerce: Enhancing Privacy in Global Transactions”

August 12 and 13, 2008

Introduction

The second technical workshop was held in Lima, Peru on August 12-13, 2008.

The themes and goals of the meeting built upon the findings of the Data Privacy Subgroup at its meeting in Lima in February 2008. At that meeting, the Subgroup established working groups and work plans to facilitate the work of nine Pathfinder projects that would provide tools and mechanisms to further the adoption of the APEC privacy principles and to test its practical implementation.

Purpose of the Workshop

The workshop was designed to provide updated information about the development of legal frameworks for privacy protection and work on specific tools and mechanisms that support privacy governance. It opened discussion about corporate social responsibility issues and its relationship to privacy and e-commerce. Finally, the workshop goals included information exchange about outreach to consumers and other stakeholders about the APEC framework and in depth discussions about the work of the Pathfinder projects.

Structure of the Workshop

The Workshop was structured to provide ample opportunity for information exchange related to developments in law, regulation, self-governance and accountability agents in member economies through panel discussion. It was further designed to encourage robust interaction among participants in breakout sessions that focused on issues related to building stakeholder awareness and understanding of the APEC approach, and to elicit reaction to developments in the work of the Pathfinder project and recommendations about the work going forward.

Summary of Proceedings

Welcome and Introduction

Guillermo Thornberry, Chairman of the Board, Osiptel, welcomed participants to the second meeting on data privacy. He spoke of the importance of cross border data flow protection to trade and employment and the need for sound frameworks for the security, reliability, and integrity of data and data exchanges. He noted the importance in particular of information flows in increasing Peru's trade with countries around the globe.

Peru looks forward, he said, to strengthening ties with APEC countries and wants to continue to be an active participant in APEC work.

Richard Bourassa, Chair of the Electronic Commerce Steering Group and Director, International Policy, E-Commerce Branch, Industry Canada, characterized the workshop as part of continued sharing of the experience of stakeholders to gain a better appreciation of regulatory, self-regulatory and legal environments within the region, and an understanding of how we might design a system across borders.

Mr Bourassa's remarks highlighted the work of the Pathfinder, which he described as a way of highlighting for leaders the areas that should be further developed and the linkages with trade, capacity building. The Pathfinders promote a multi-stakeholder approach to the work of building a cross-border mechanism and an open, frank, sharing of ideas and domestic and international experiences. As work on privacy is a clear priority for APEC; ministers have asked for annual reports on the progress of the Pathfinder

Rosario Fernandez, Minister of Justice, Peru, provided an overview of privacy protection in Peru. She talked about its roots as a human right and that the importance of the right has been magnified because of the growing ability to store, reproduce, share and compile data. She referenced many international instruments for protecting data and the constitutional foundations for the Peruvian legal framework for data protection.

She then talked about the constitutional foundations for the Peruvian legal framework for data protection. She discussed in some depth the goals of the Peruvian approach - transparency about data collection (what, why and for what reasons is data being collected) and about the importance of ensuring data accuracy, completeness. She also noted the criminal sanctions available for violations of privacy.

Session I: International approaches to cross-border data flows

The moderator described the panel as a sharing of perspectives related to different way of making progress in development of cross border privacy rules to provide a context for cross-border flows of information.

Alfredo Reyes Krafft, Executive Vice President, Mexican Internet Association, described data as the new currency of international economy. Economic development, he said, will depend upon the way public policy is developed so that it does not limit the flow of information, while recognizing and addressing through security measures the risk that comes from the use of this information. He discussed the complications that compliance with the EU adequacy approach can present, and how it can seriously challenge the operations of companies.

Mr Reyes highlighted the need to find an adequate balance of public policy at the national level and codes of conduct that can be implemented through seal programs, He cited the Mexican experience, where two initiatives for national reform are under consideration beginning at the constitutional level. Mexico has also located data protection in the Ministry of Economy, which has a deep knowledge of the issue and of the critical value of data to commercial activity.

Kamlesh Bajaj, CEO, Data Security Council of India, NASSCOM, introduced meeting participants to NASSCOM - the National Association of Software and Service Companies, and described their "4E Framework for Trusted Outsourcing" that involves engagement with customers, governments, regulators, industry bodies and think tanks; education for members, law enforcement and media; enactment of IT Act and new sections to cover emerging crimes; and enforcement through certification, and dispute resolution.

He talked about NASSCOM's work to develop the Data Security Council of India - an independent, non-profit self regulatory organization that seeks to create a culture of security and privacy in the Indian IT industry. The DSCI will propose a basic set of security and privacy standards to which companies can choose to adhere. The key objective is to strengthen India as a secure outsourcing destination by promoting practical measures that foster confidence in market rules and institutions.

Michikazu Chihara - Consumer Confidence Issue Group, Global Business Dialog discussed the evolution of complaint handling systems beginning with the bilateral approach of the European Consumer Center Network established in 2005. At the GBDe Tokyo Summit in 2007 ICA Net International Consumer Advocacy Network was proposed, an approach that provides for complaint intake, case management through liaison between consumer advocacy liaison offices (CALOs), and involvement of law enforcement and alternative dispute resolution.

Michael Donohue, Organization for Economic Cooperation and Development, discussed the OECD's perspective on free flows of data and their work to foster a protection for data both at a high level (OECD Guidelines) and at a more granular level. It has worked to develop a contact list of single national points of contact for bringing privacy complaints; and a request for assistance form that identifies key categories of information to be provided and ensures careful pre-request preparation.

Mr Donohue highlighted the OECD's work to promote meetings between privacy enforcement authorities and privacy officers about how to resolve privacy related complaints to encourage maximum ease and effectiveness; the OECD convened a joint meeting between privacy authorities and privacy professionals in May 2008. In the Seoul Declaration the OECD endorsed cooperation between governments and enforcement authorities in the areas of protecting privacy and reinforce co-operative relationships and mutually beneficial collaboration with the Asia Pacific Economic Cooperation.

Lourdes Zamudio, Iberic American Expert stated that an overarching objective in Latin America is that the current regulation should ensure that information transfer not be limited but guarantee that world trade development can be compatible with rights of people regarding information.

She indicated that the goal of law in Latin America is to recognize data as an asset of the organization that must be balanced with the right of individual to privacy. She also talked about the characteristics of regulatory protection in Latin America, emphasizing the asymmetry in the way that Latin American economies regard data protection rights; the political considerations at the regional level; and the influence of the European model for data protection. She emphasized the need for a homogeneous coordinate legal framework for protection of data to smooth data flows as essential to development of global markets.

Colin Minihan, Chair of the Data Privacy Subgroup provided context for the work of the Pathfinder. He explained that the Pathfinder work grows out of the high level principles of the APEC Privacy Framework. While the Framework offers principles and commentary, the Pathfinders focus on implementation and on ensuring that the APEC principles are effective. By providing these practical tools, the Pathfinder fosters an environment conducive to achieving the goals of trade and investment in the region.

The Pathfinder divides a large endeavor into nine pieces that attempt to accomplish implementation of four aspects of the Framework: self assessment, compliance review, recognition/acceptance, and dispute resolution and enforcement. Project nine will test the practical tools that will be developed in project one through eight. The final documents generated by the Pathfinders will form the basis for the system.

Session II: How Stakeholders Understand Data Privacy

Nigel Waters, Australian Privacy Foundation, provided the perspective of the consumer advocacy community on the APEC approach. He noted the varied views within the privacy community on the effort, as well as the overlapping objectives of the advocacy community and the APEC framework, although he indicated that civil society will push for higher standards. Civil society is looking for reassurance that the APEC approach will not replace domestic law. Growing recognition of the need for and value of, civil society input on the work. He expressed concern that there is still no independent civil society voice on the Privacy Subgroup to balance business interests. He expressed interest within civil society in the pathfinder process which they will monitor, particularly project 9, and encourages consultation with civil society within economies.

Claro Parlade discussed data privacy in the Philippines, reviewing the law and administrative orders relevant to privacy in the economy. He talked about how data privacy protection approaches in the Philippines adhere to the 9 principles of the APEC Privacy Framework through administrative order number eight (2006) and in pending bills related to privacy. The Philippines has also developed a multi-stakeholder technical working group on data privacy convened by the

Commission on ICT and Business Processing Association of the Philippines and composed of other stakeholders. It seeks to develop a common position on the issues of data privacy to be recommended to the Senate and the House of Representatives.

Alexander Forsyth, discussed the importance of the strong role of civil society with respect to data privacy, and of the critical role of raising consumer awareness. He discussed the high level of informality that can exist in addressing privacy, particularly in developing countries, that does not allow for adequate follow-up and monitoring and that must be remedied to assure appropriate protection.

Lai Viet Anh discussed Vntrust and data privacy in Viet Nam. She talked about the evolving culture of privacy in Viet Nam, the perspective of stakeholders on data privacy and the legal framework in the economy for privacy protection as embodied in the civil code, the law of e-transactions and the law on information technology.. She spoke in some detail about TrustVn - the trust mark program for websites as the first self-regulatory mechanism for businesses in the e-commerce arena in Viet Nam, promoting good practices rather than imposing legal sanctions.

Leigh Williams, *BITS Financial Services Roundtable*, discussed the importance of collaboration between in industry and government in addressing privacy and protecting data flows from loss or misuses. APEC represents that kind of collaboration. Its power will come of it being an internationally standard tool. He spoke of the shared self assessment tool developed and used by the financial services industry as the kind of tool that, when accepted by regulators, can further that collaborative approach. He also talked about the need to align individuals' expectations about the use of information with the actual use of information. When there is a trusted relationship with an organization, the consumer will also trust their use of the information.

Session III: Corporate Social Responsibility Issues related to data privacy and e-commerce

Luis Quesada, *Peruvian SOM*, set the stage for the session, talking about corporate social responsibility as the commitment of business to contribute to sustainable economic development by working with communities to promote quality of life. He characterized this effort as one with benefits for both business and development. He discussed the business case for corporate social responsibility, and discussed APEC's potential role in facilitating its growth in the region.

Scott Taylor, *Hewlett-Packard*, discussed privacy is one aspect of the company's broader approach to corporate responsibility. The company structures its obligations as liability based and accountability based. In the company decision-makers are made accountable, and in addition to legal liability, the company considers ethics and risks. Is it legal, is it secure, does it meet our privacy promises. This decision making is formally integrated into the decision making of the company. Self Certified companies meet certain proof points and trust. For cross-border privacy rules to work companies will have to do a better job of demonstrating how companies actually do what they say. Some outside party will have to provide oversight.

Peter Cullen, *Microsoft* discussed the special responsibility that Microsoft carries that comes with market success. He discussed Microsoft's trustworthy computing initiative, which was an outgrowth of questions raised about product and system security shortly after September 11. The attack exposed vulnerability in Microsoft products; Bill Gates said that in order to have trust, systems and software must be secure, private, reliable and that business needed to operate with a great deal of integrity.

Mr Cullen noted that Microsoft recognized its responsibility not only to address these concerns within its own products and systems, but to encourage and participate with companies to help the business ecosystem of which it is a part change its ways, incorporating privacy, security, but the new business models created new value for consumers and new opportunities for bad actors.

Mr Cullen discussed the need not only for his company to address these questions, but also to collaborate with other companies, some of whom are competitors, to promote transparency and to help create a better ecosystem. He encouraged companies to think more holistically about their role to create trusted information flows.

Maite Vizcarra, Ericsson, discussed privacy as one aspect of her company's commitment to corporate social responsibility. For Ericsson, corporate social responsibility provides competitive advantages by encouraging new business opportunities and supporting sustainable business solutions.

Session IV: Building consumer/stakeholder awareness

Participants gathered into three groups to consider and discuss questions related to building consumer and stakeholder awareness of the APEC approach to protecting cross border data flows across the region.

Session V: Approaches to Cross-border Data Privacy

Pamela Harbour, Commissioner, U.S. Federal Trade Commission talked about the work being done toward practical implementation of the APEC Framework and about the challenges to develop an enforcement cooperation arrangement that makes the system work. She emphasized that while enforcement is never as seamless as the rate of global information flows, seamlessness is the goal. She talked about three requirements for enforcement cooperation agreements: the need to be able to share information, to provide investigative assistance; to set priorities about what cases will be considered, and to maintain appropriate levels of confidentiality for information relevant to an investigation. She illustrated the practical aspects of furthering these goals through FTC experience and the laws enacted to grant FTC the ability to exercise its investigative authority in cross border cases. She also talked about the international agreements to which the FTC is a party and their importance to cross-border cooperation.

Brenda Kwok, Office of the Data Privacy Commissioner, Hong Kong, China discussed the provisions of the Hong Kong law and the prevalence of outsourcing by Hong Kong businesses. She talked about the obstacles in the legal regime to cross-border enforcement and the need to tackle those challenges. Work to review Hong Kong law in the context of APEC and to consider provisions in international privacy laws and standards now take priority as Hong Kong considers how it will implement the APEC initiative. She emphasized the need for cooperation within economies to ensure a single point of contact and comprehensive coverage across industries.

Session VI: The Data Privacy Pathfinder projects and stakeholder roles

Heather Shaw, International Chamber of Commerce, discussed the work led by her organization on Projects one and three. She reviewed the work on development of accountability agent program requirements and participant self assessment. She discussed the combination of projects one and three, the need for program requirements to be applicable to participants in all economies no matter what kind of accountability agent is under consideration and the need to keep the forms simple and complete. She also emphasized the need for clear definitions for many of the terms used in the documents. She indicated that work toward a glossary of terms could cut across all of the Pathfinder projects. She noted that the overall goal was development of specific, objective criteria for both accountability agents and self assessment that also allowed for the flexibility necessary to be applicable across privacy regimes. The documents are works in progress and subject to change..

Robin Layton, U.S. Department of Commerce (Project Two) - Project Two involves creation of a document to set out the criteria necessary for a private sector Accountability Agent to participate in the APEC Cross-border Privacy Rules program. The form under development would be

submitted to the appropriate government agency within an economy for review of compliance with the criteria. The work of the group was limited to private sector and the work of the group will turn attention to public sector, where an accountability agent might be a trust mark or other private sector body. That effort may involve an amalgamation of approaches.

Blair Stewart, Office of the Privacy Commissioner, New Zealand, discussed work on projects five, six and seven.

The goal of Project five is to establish a directory of Data Protection Agencies, supervisory authorities and/or privacy contact officers. Such a directory would assist privacy enforcement authorities to locate counterparts in the event of cross-border complaints. The approach taken by the project is to provide a single contact point approach and is compatible with the strategy taken by the OECD, so that a shared or common directory may be possible in the future. Project six entails development of template documentation for cooperation arrangements between enforcement authorities to facilitate exchange of information for enforcement and increase and promote cross-border investigation and enforcement cooperation. The approach of the project is a multilateral memorandum of understanding, with the core focus on requesting and providing assistance in investigation and enforcement but framework able to expand to wider areas of enforcement cooperation. Project seven will develop a template enforcement 'request for assistance' form. The project will facilitate the seeking and providing of assistance in efficient and appropriate form, allowing for low level resolution and responsive regulation. The form is closely modelled on OECD form, tailored for APEC Privacy Framework

This arrangement facilitated by these projects will be a significant step forward for general enforcement cooperation (desirable in the global digital economy) regardless of the pace of development of CBPRs or the particular direction that CBPRs might take in an individual economy or across APEC. The arrangement has been prepared while conceptual and developmental work is ongoing on CBPRs – while the arrangement anticipates and address CBPRs there may be room for improvement as other parts of the CBPR framework becomes clearer. Some matters of detail yet to be worked through and agreed before the arrangement is piloted

Reporting outcomes from breakout sessions

The session began with reports of the three breakout sessions on the Pathfinder projects organized into discussions of business, consumer and regulator considerations.

The business breakout session, led by *Markus Heyder and Kenjiro Suzuki*, focused on why businesses would be interested in participating in the APEC approach. The discussion focused on business's desire for more consistent, efficient complaint handling. They look to cross border privacy rules to create regulatory certainty and standardization and uniformity in procedures, forms and rules. They also see benefit in creating uniformity and a more common language in the way in which we talk about privacy. It will simplify risk management, compliance, contract enforcement and provide a competitive advantage for participating companies. They noted the possibility of enhanced privacy protection because of the ability of government to outsource some of the enforcement functions for which they do not have sufficient resources. Cross border privacy rules might also provide a way to address risks in economies where there is no privacy law.

The consumer breakout discussion, moderated by *Nigel Waters and Ivan Ferrando*, focused on the possibility of protection for consumers. They commented on needing reassurance that APEC approach will not supplant domestic regulation or the ability of individuals from pursuing alternative remedies. They saw the system as possibly overcoming jurisdictional limitation and encouraging a higher level of business engagement in addressing privacy. The group made three recommendations: first, there should be a continuous improvement loop for the implementation to assure monitoring about how it is developing and working in practice; the need

for effective regulatory mechanisms to support cross-border privacy rules; and third, the importance of education and awareness throughout APEC and within member economies.

Carman Bagley reported the discussion of the regulator group discussion led by *Blair Stewart, Julio Cesar Vega and Edgardo Martinez*, which considered what kind of infrastructure was necessary to promote awareness and understanding of the cross-border privacy rule process. They emphasized a multi-stakeholder approach to furthering that awareness. They noted the particular need to reach small and medium size enterprises. They also emphasized the need for regulators to have the authority necessary to cooperate with one another and for economies in the initial stages of setting up a privacy regime to be sure to establish the authority to share information and cooperate within the region. Regulators will also need to figure out what the relationship will be with accountability agents and how their effectiveness will be evaluated. They cautioned about the need for some uniformity among accountability agents and the standards for accreditation to avoid possible issues of accreditation shopping.

The final presentation was of the results of the Day I breakout discussion on building stakeholder awareness.

Group One, led by Claro Parlade and Jorge Bossio commented on his group's discussion of the culture of privacy developing now in economies and that exposure to new risks raised by data, particularly through e-commerce, drives the development of a privacy culture. He noted ways to build awareness as including government policy, adoption by business of best practices based on APEC principles as part of their corporate strategy and a solid communication plan.

Group Two led by Michael Donohue and Katitza Rodriguez considered the status of government understanding of privacy concerns and realities and looked to strategic approaches in instruments such as free trade agreements as a way to raise government awareness. They encouraged multi-channel outreach but cautioned that pathfinder projects must launch before communication can happen.

Group Three led by Nigel Waters and Rosario Chuecas reported that while levels of awareness of the work of APEC are not high, they are increasing rapidly. Broad educational efforts may be premature, but business awareness is needed urgently and a wider range of businesses need to be included in the process. The breakout group also noted that engagement of international bodies could also foster progress.

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