

INTRODUCTION

- Jim, thank you for the kind introduction. It is an honor to join the panel.
- Congratulations to Dr. Murai and Dr. Tezuka for the success of the Keio Cybersecurity Center.
- Congratulations to you, Omair Qazi, and your team for the success of APIDE – the Asia Pacific Institute for the Digital Economy.
- The U.S. Department of Commerce and U.S. Commercial Service support the important work of the Keio Cybersecurity Center and APIDE.

CROSS-BORDER DATA FLOWS

- Privacy, personal information protection, cross-border data flows, and cyber security are critical to the global economy. The United States is working to strengthen privacy protections while ensuring that the digital economy is able to grow and drive economic growth.
- Data flows are increasing rapidly. Since 2009, data flows have increased by about 5 times.
- Companies across all sectors of the economy rely on the internet and data flows to do business.
- Each minute, about 80 terabytes of data now enters and leaves the United States.
- Data flows are critical to the global digital economy, and to boosting economic growth.
- According to an analysis by McKinsey, data flows raised GDP by \$2.8 trillion dollars in 2014.
- Building trust and confidence is critical for the digital economy to grow – and personal information protection and cyber security are a key to trust.
- The Obama Administration's Privacy Blueprint of 2012 stressed the importance of building trust in the area of digital privacy. The Blueprint highlighted the importance of fostering multi-stakeholder processes to develop enforceable codes of conduct and of improving global interoperability.
- The APEC Privacy Framework and APEC Cross Border Privacy Rules (CBPR) system are an important part of this work. The Department of Commerce has been closely engaged in this work in APEC, through the eCommerce Steering Group (ECSG).
- Leading companies are now APEC CBPR certified including: Apple, Cisco, IBM, HP, & Merck.

APEC CBPR

- The United States has been working closely with Japan to advance APEC's Privacy Framework and APEC Cross Border Privacy Rules (CBPR) system. These are models of a multi-stakeholder approach to facilitating cross-border data flows while upholding strong privacy protections.
- The APEC CBPR system was developed to build consumer, business and regulator trust in cross border flows of personal information. The APEC CBPR system is a voluntary accountability-based system that facilitates privacy-respecting data flows among APEC economies.
- Japan is now a fully operational participant in the CBPR system. We understand that Japan intends to use the CBPR system as an approved data transfer mechanism under the amended privacy law.
- JIPDEC has been approved as Japan's first Accountability Agent and is accepting applications for APEC CBPR certification from companies.
- The APEC CBPR system ensures confidence in data flows by providing voluntary but enforceable standards for privacy protection that allow data to flow across the Asia-Pacific region.
- The APEC CBPR system is based on a set of 9 privacy principles developed over 7 years in a multi-stakeholder process. Security is one of the 9 principles of the APEC Privacy Framework.
- To participate in the APEC CBPR system, companies seek certification from an Accountability Agent in their economy. The certification indicates that the organization's privacy practices align with the APEC Privacy Framework principles, allowing it to transfer data between participating economies.
- Accountability Agents review, certify, monitor and enforce the privacy policies and practices of participating companies to ensure compliance with the APEC CBPR system.

- Privacy Enforcement Authorities provide backstop enforcement for the APEC CBPR system pursuant to domestic law, and in cross-border matters cooperate with authorities in other economies.
 - So far, the United States, Japan, Canada, and Mexico have joined the system.
 - The APEC CBPR System provides numerous benefits to companies, consumers, and governments.
 - Companies that are APEC CBPR approved demonstrate strong privacy protections to consumers and business partners.
 - Companies can use APEC CBPR as a foundation for building a global compliance system, simplifying compliance and reducing costs.
 - Consumer benefits from APEC CBPR include strong privacy protections, and improved complaint handling and dispute settlement resources.
 - Governments benefit from the APEC CBPR system.
 - The APEC CBPR system facilitates international trade while enhancing privacy protections.
 - The APEC CBPR system enables improved coordination between authorities on enforcement efforts and investigations.
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- The U.S. and Japan are working to expand the APEC CBPR system before new barriers to data flows take hold.
 - Now is a key time for stakeholders to highlight the importance of data flows and support the APEC CBPR system.
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- Interoperability between the APEC CBPR system and other systems is an important goal.
 - APEC is working to improve interoperability between the CBPR system and the European Union's Binding Corporate Rules (BCR).
 - Interoperability work is proceeding on a common application for APEC CBPR and the EU BCR.
 - Companies are beginning to use APEC CBPR certification as a basis to apply for EU BCR.
 - Merck announced the first successful approval of a BCR application based on APEC CBPR certification.
 - By first obtaining APEC CBPR certification and basing their EU BCR application on this, Merck achieved significant savings of time and money.
 - Merck saved about 4 months of review time and cut their costs by 90% using the APEC CBPR system.
 - APEC is continuing to work with the EU and continue with productive discussions on interoperability.
 - This is a real-world example of APEC CBPR system benefits.
 - These benefits will expand as the APEC CBPR expands as a regional framework for data transfers.
 - Over the past year, there has been significantly increased interest from APEC economies and businesses in joining the system, and APEC aims to build on this growing momentum to expand the APEC CBPR system.
 - While the CBPR system was developed for the APEC region, it is flexible enough to expand to other regions, offering the potential for a global framework for data flows in the future.

What are the major areas of convergence and divergence between the EU and APEC approaches to privacy?

- The United States, APEC, and the EU share the common goal of protecting private information while also facilitating innovation, trade, and economic growth.
- Trust is essential to the digital economy.
- Interoperability is key to bridge different approaches to privacy and regulatory regimes.
- Interoperability is important to sustain the global digital economy and enable digital innovation and technologies to drive economic growth around the world.
- Interoperability is a goal of APEC for the multilateral APEC Cross Border Privacy Rules (CBPR) system.
- The United States and Japan are working together to implement the APEC CBPR system.
- This year JIPDEC was approved as the Accountability Agent for the APEC CBPR in Japan, and JIPDEC is now taking applications for the APEC CBPR.
- As the APEC CBPR system is implemented in other APEC economies, and as more companies are approved under the CBPR system, the APEC CBPR will help drive discussions on interoperability.
- Interoperability is moving forward.
- In 2012 the APEC – EU Working Committee was launched to discuss differences and promote interoperability and facilitate data transfers.
- In 2014 the Committee completed the Referential project.
- The Referential is a checklist for companies applying for authorization of the EU system of Binding Corporate Rules System (BCR) and certification under APEC's Cross Border Privacy Rules system (CBPR). It outlines compliance and certification requirements of both APEC CBPR and EU BCR systems, and identifies common elements and additional requirements for each. The Referential is useful for companies applying for certification under both systems. The Referential is just the first step of the work on APEC CBPR and the EU BCR. The long-term goal is to work on the interoperability of these systems.
- Since August 2015, the joint APEC-EU Working Committee has held discussions with private sector stakeholders who provided views and advice on the functionalities and important elements of a common questionnaire. The Working Committee is currently continuing work in developing this common questionnaire.
- The work and progress towards interoperability is encouraging.

In practical terms:

- APEC CBPR approval is fast – taking a few weeks to be approved on average.
- The EU BCR process takes about 18 months on average, up to about 4 years in some cases.

Are you encouraged by Merck's recent success in bridging the gap?

- Yes, the Merck case is very encouraging, and demonstrates the some of the benefits of the APEC CBPR system and the work towards interoperability.
- In March 2016 Merck was the first company to successfully use their APEC CBPR approval to apply for and gain EU Binding Corporate Rules (BCR) Approval.
- Because Merck based its BCR application on its previously-approved CBPR certification, a broadly BCR-compliant global privacy program was already in place.
- Merck saved about 4 months off the 18 month average for BCR approval.
- According to Merck, the total cost of its BCR was about 90% less than it would have been.

MERCK QUOTE Chief Privacy Officer:

“The value of this approach is that we were able to obtain both CBPR and BCR approvals while maintaining the substance and structure of our existing global privacy program. The practical effect is that we gained greater efficiency in how we manage cross-border data transfer and global data processing without adding complexity to how we operate”,

said Hilary Wandall, Chief Privacy Officer.

How will enforcement and dispute settlement work in the APEC context — can we achieve the transparency and predictability needed for customers to entrust their data to the Cloud in Asia?

- Building consumer trust to enable the digital economy, cloud services, eCommerce, and innovation to grow and drive economic growth is the goal of the APEC CBPR system.
- Transparency and predictability are goals of the APEC Electronic Commerce Steering Group (ECSG) - that promotes the development and use of electronic commerce and the digital economy by supporting the creation of legal, regulatory and policy environments that are predictable, transparent and consistent.
- The APEC Privacy Framework and the APEC CBPRs are outcomes of ECSG work.
- Dispute settlement and enforcement are strengthened by the APEC CBPR system.
- Improved dispute settlement and enforcement will help build trust in the global digital economy and cloud services.

Dispute settlement in the APEC CBPR system is strengthened.

- Accountability Agents play a role in dispute resolution, providing additional dispute settlement resources in addition to those of the data controller company.
- In the United States, the first Accountability Agent is TRUSTe.
- In Japan, JIPDEC was approved this year as the first Accountability Agent.
- These Accountability Agents can serve as both ‘auditors’ and ‘dispute resolvers’ and have the potential to increase significantly the resources available for ensuring businesses are accountable for their privacy practices and also impact on the role of privacy enforcement authorities and where they place their attention and resources.
- For example, TRUSTe provides a third-party dispute resolution service, which helps companies efficiently manage privacy inquiries from customers and addresses dispute handling requirements.

Enforcement is strengthened under the APEC CBPR system.

- The establishment of the multilateral APEC Cross-Border Privacy Enforcement Arrangement (CPEA) in July 2010 provided the first mechanism in the APEC region for Privacy Enforcement Authorities (PEAs) to share information and provide assistance for cross-border data privacy enforcement.
- The CPEA signifies the ongoing commitment within APEC to increase the protection of cross-border flows of personal information and is a significant step in the effective implementation of the APEC Privacy Framework.
- Improved dispute settlement and enforcement will help build trust in the global digital economy and cloud services.

In Japan there are many agencies participating including
 Ministry of Foreign Affairs of Japan
 Ministry of Economy, Trade and Industry of Japan
 Ministry of Internal Affairs and Communications of Japan
 Ministry of Finance of Japan
 Ministry of Justice of Japan
 Ministry of Agriculture, Forestry and Fisheries of Japan
 Ministry of Land, Infrastructure, Transport and Tourism of Japan
 Ministry of Defense of Japan
 Ministry of Health, Labour and Welfare of Japan
 Ministry of Education, Culture, Sports, Science and Technology of Japan
 Ministry of Environment of Japan
 Cabinet Office of Japan
 Consumer Affairs Agency of Japan
 Financial Services Agency of Japan
 National Police Agency of Japan

BACKUP MATERIAL

<p>APEC CBPR CERTIFIED COMPANIES Adaptive Insights, Inc. Apple Inc. Box, Inc. Cisco Systems Hewlett Packard Enterprise Company Hightail, Inc. HP Inc. IBM lynda.com, Inc. Mashable Merck and Co., Inc. Rimini Street, Inc. Saba Software, Inc. The Ultimate Software Group Workday, Inc. Yodlee, Inc. Ziff Davis, LLC</p>	<p>The nine principles in the APEC Privacy Framework:</p> <ul style="list-style-type: none"> • preventing harm • notice • collection limitations • uses of personal information • choice • integrity of personal information • security safeguards • access and correction • accountability
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- We are working to grow the Privacy Recognition for Processors system, which will help data controllers to identify trusted processors and enables processors to demonstrate ability to comply with controllers' requirements.