

# APEC CROSS-BORDER PRIVACY RULES SYSTEM

## *POLICIES, RULES AND GUIDELINES*

*The purpose of this document is to describe the APEC Cross Border Privacy Rules (CBPR) System, its core elements, governance structure and the roles and responsibilities of participating organizations, Accountability Agents and Economies. This document is to be read consistently with the APEC Privacy Framework. Nothing in this document is intended to create binding international obligations, affect existing obligations under international or domestic law, or create obligations under the laws and regulations of APEC Economies.*

DEVELOPMENT OF THE CBPR SYSTEM .....	2
OPERATION OF THE CBPR SYSTEM.....	4
CBPR PROCESSES OVERVIEW .....	8
THE CBPR SYSTEM AND DOMESTIC LAWS AND REGULATIONS.....	11
GOVERNANCE OF THE CBPR SYSTEM .....	12
SUCCESS CRITERIA FOR THE CBPR SYSTEM.....	14
ANNEX A – CHARTER OF THE APEC CROSS-BORDER PRIVACY RULES SYSTEM JOINT OVERSIGHT PANEL .....	15

## DEVELOPMENT OF THE CBPR SYSTEM

1. APEC plays a critical role in the Asia Pacific region by promoting a policy framework designed to ensure the continued free flow of personal information across borders while establishing meaningful protection for the privacy and security of personal information.

2. In November 2004, Ministers for the twenty-one APEC Economies endorsed the APEC Privacy Framework<sup>1</sup>. The Framework is comprised of a set of nine guiding principles and guidance on implementation to assist APEC Economies in developing consistent domestic approaches to personal information privacy protections. It also forms the basis for the development of a regional approach to promote accountable and responsible transfers of personal information between APEC Economies.

3. The Privacy Framework provides “a principles-based ... framework as an important tool in encouraging the development of appropriate information privacy protections and ensuring the free flow of information in the Asia Pacific region.”<sup>2</sup> Four of the purposes of the framework are to<sup>3</sup>:

- develop appropriate privacy protections for personal information, particularly from the harmful consequences of unwanted intrusions and the misuse of personal information;
- enable global organizations that collect, access, use or process data in APEC Economies to develop and implement uniform approaches within their organizations for global access to and use of personal information;
- assist enforcement agencies in fulfilling their mandate to protect information privacy; and
- advance international mechanisms to promote and enforce information privacy and to maintain the continuity of information flows among APEC economies and with their trading partners.

4. In addition, the Privacy Framework calls for the development of a system of voluntary cross-border privacy rules for the APEC region in its “Guidance for International Implementation”.<sup>4</sup>

5. These four purposes and the international implementation guidance formed the basis of the APEC Data Privacy Pathfinder, which was endorsed by APEC Ministers in September 2007 in Sydney, Australia. An APEC Pathfinder is a cooperative project among participating APEC Economies. The purpose of the Data Privacy Pathfinder was to develop a simple and transparent system that can be used by organizations for the protection of personal information that moves across APEC Economies. It was determined that the system should:

- provide a practical mechanism for participating Economies to implement the APEC Privacy Framework in an international, cross-border context; domestic laws,

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<sup>1</sup> Part IV of the Framework dealing with (a) guidance for domestic implementation and (b) guidance for international implementation was completed and endorsed by Ministers in 2005.

<sup>2</sup> APEC Privacy Framework, Part I, Preamble, para 4, 2005

<sup>3</sup> APEC Privacy Framework, Part I, Preamble, para 8, 2005

<sup>4</sup> APEC Privacy Framework, Part IV, Guidance on Int'l Implementation, Section III, paras 46-48.

regulations and guidelines would continue to cover the collection and management of information within Economies;

- provide a means for organizations to transfer personal information across participating APEC Economies in a manner in which individuals may trust that the privacy of their personal information is protected; and
- apply only to organizations (that is, businesses) – it is not intended to deal with the personal information handling practices of governments or individuals.

6. In the development of the APEC Data Privacy Pathfinder, the following stakeholder considerations were identified:

- organizations should have trust and confidence that organizations with which they enter into transactions that involve personal information have appropriate policies and procedures in place that are consistent with the APEC principles and respect applicable privacy and data security laws, as well as the privacy and security representations made to the individual when the personal information was collected;
- consumers should have trust and confidence that their personal information is transmitted and secured across borders; and
- governments should ensure that there are no unreasonable impediments to cross-border data transfers while at the same time protecting the privacy and security of their citizens' personal information domestically and, in cooperation with foreign governments, internationally.

7. The Pathfinder set out to develop a voluntary APEC Cross-Border Privacy Rules (CBPR) System, consistent with the above purposes, criteria and considerations, through the development of the following core documents:

- a detailed self-assessment questionnaire based on the nine APEC Privacy Principles for use by an applicant organization<sup>5</sup>;
- a set of baseline program requirements based on the nine APEC Privacy Principles against which an APEC-recognized Accountability Agent will assess an organization's completed questionnaire<sup>6</sup>;
- recognition criteria to be used by APEC Economies when considering the recognition of an Accountability Agent<sup>7</sup>;
- the Cross Border Privacy Enforcement Arrangement<sup>8</sup> (CPEA); and
- the Charter of the Cross Border Privacy Rules Joint Oversight Panel<sup>9</sup> (JOP).

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<sup>5</sup> See Project 1, CBPR Intake Questionnaire, 2011/SOM1/ECSG/DPS/020

<sup>6</sup> See Project 3, CBPR Program Requirements for use by Accountability Agents

<sup>7</sup> See Project 2, Accountability Agent Recognition Criteria, 2010/SOM1/ECSG/DPS/011

<sup>8</sup> See Projects 5/6/7, The Cross Border Privacy Enforcement Cooperation Arrangement, 2010/SOM1/ECSG/DPS/013

<sup>9</sup> See Charter of the Cross Border Privacy Rules Joint Oversight Panel, Annex A

## **OPERATION OF THE CBPR SYTEM**

### ***Overview of the CBPR System***

8. Organizations that choose to participate in the CBPR System should implement privacy policies and practices consistently with the CBPR program requirements for all personal information that they have collected or received that is subject to cross-border transfer to other participating APEC economies<sup>10</sup>. These privacy policies and practices should be evaluated by an APEC-recognized Accountability Agent for compliance with the CBPR program requirements. Once an organization has been certified for participation in the CBPR System, these privacy policies and practices will become binding as to that participant and will be enforceable by an appropriate authority, such as a regulator to ensure compliance with the CBPR program requirements.

### ***Elements of the CBPR System***

9. The CBPR System consists of four elements: (1) self-assessment; (2) compliance review; (3) recognition/acceptance; and (4) dispute resolution and enforcement.

### **CBPR ELEMENT 1 – SELF-ASSESSMENT**

#### ***Self-Assessment Questionnaire for Organizations***

10. The CBPR System relies on an organization's self-assessment of their data privacy policies and practices against the requirements of APEC Privacy Framework using an APEC-recognized CBPR questionnaire (*see para 21*). This questionnaire will be provided by the appropriate APEC-recognized Accountability Agent, in accordance with established selection requirements (*see para 38*).

#### ***Link to Compliance Review***

11. The completed questionnaire and any associated documentation will then be submitted to the APEC-recognized Accountability Agent for confidential review against the baseline standards established in the CBPR program requirements (*see para 7*).

12. The submission of this questionnaire is the first step in an evaluative process that will determine whether an organization's privacy policies and practices are consistent with the program requirements of the CBPR System. This process can also be used by organizations to help them develop privacy policies or revise existing privacy policies to meet the program requirements of the CBPR System.

13. This questionnaire may be supplemented by additional questions, documentation or requests for clarification as part of the APEC-recognized Accountability Agent's review process.

#### ***Link to Compliance Directory***

14. An organization that is found to be compliant with the CBPR program requirements by an APEC-recognized Accountability Agent will be certified as CBPR compliant and will have relevant details of their certification published in an APEC-hosted website so that

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<sup>10</sup> While not required as part of the CBPR System, participating organizations are encouraged to apply the same privacy policies and procedures to all personal information that they have collected or received even if it is not subject to cross border transfer or if it is subject to such transfer only outside of participating APEC economies.

consumers and other stakeholders can be made aware that the organization is an active participant in the CBPR System.

## **CBPR ELEMENT 2 – COMPLIANCE REVIEW**

### ***Accountability Agent Recognition Criteria***

15. To become an APEC-recognized Accountability Agent, an Accountability Agent should meet the established recognition criteria to the satisfaction of APEC Economies (*see para 33*).

16. These criteria provide for the evaluation of an Accountability Agent's program requirements, dispute resolution procedures, and policies and procedures for the avoidance of conflicts of interest as well as process issues, including the certification and re-certification processes, ongoing monitoring and compliance reviews and enforcement of program requirements.

17. As a condition of APEC recognition, Accountability Agents are required to release anonymised case notes and complaint statistics. Complaint handling is an important element of the CBPR System. These actions will:

- promote understanding and increase transparency about the CBPR System;
- aid consistent interpretation of the APEC Privacy Principles and the CBPR System;
- provide additional guidance to organizations on the application of the APEC Privacy Principles and CBPR System; and
- promote accountability of those involved in complaints handling and build stakeholders' trust in the process.

18. As a further condition of APEC recognition, an Accountability Agent should consent to respond to requests from relevant government entities in any APEC Economy that reasonably relate both to that Economy and to the CBPR-related work of the Accountability Agent, where possible.

19. All APEC-recognized Accountability Agents should endeavour to cooperate when appropriate and where possible in CBPR-related complaint handling matters with other recognized Accountability Agents.

### ***Compliance Review Process of CBPRs***

20. When reviewing an organization's privacy policies and practices as described in the self-assessment questionnaire, an APEC-recognized Accountability Agent should assess them against the CBPR program requirements. These program requirements are designed to provide the minimum standard that applicant organizations should meet in order to ensure that the assessment process is conducted in a consistent manner across participating Economies. An APEC-recognized Accountability Agent's assessment process may exceed this standard but may not fall below it.

21. Where an applicant Accountability Agent intends to make use of its own questionnaire and/or program requirements in lieu of the APEC-recognized self-assessment questionnaire and/or the APEC-recognized CBPR program requirements (*see para 7*), it

should establish its comparability to the satisfaction of APEC Economies as a condition of APEC recognition (*see para 54*).

### **CBPR ELEMENT 3 – RECOGNITION**

#### ***Compliance Directory and Contact Information***

22. APEC Economies will establish a publicly accessible directory of organizations that have been certified by Accountability Agents as compliant with the CBPR System. The directory will include contact point information that consumers can use to contact participating organizations. Each organization's listing will include the contact point information for the APEC-recognized Accountability Agent that certified the organization and the relevant Privacy Enforcement Authority. Contact point information allows consumers or other interested parties to direct questions and complaints to the appropriate contact point in an organization or to the relevant Accountability Agent, or if necessary, to contact the relevant Privacy Enforcement Authority.

23. The directory and contact lists will be hosted by the APEC Secretariat and maintained by the Electronic Commerce Steering Group in accordance with the APEC website Guidelines<sup>11</sup>. This website may be expanded to contain FAQs and additional information on the CBPR System for potential applicant organizations and for consumers.

### **CBPR ELEMENT 4 – ENFORCEMENT**

#### ***Cooperation Arrangement for Cross-Border Privacy Enforcement***

24. The CBPR system should be enforceable by Accountability Agents and Privacy Enforcement Authorities:

- Accountability Agents should be able to enforce the CBPR program requirements through law or contract; and
- The Privacy Enforcement Authorities should have the ability to take enforcement actions under applicable domestic laws and regulations that have the effect of protecting personal information consistent with the CBPR program requirements.

25. The CPEA, which was endorsed by APEC Ministers in November 2009 and commenced on 16 July 2010, aims to:

- facilitate information sharing among Privacy Enforcement Authorities (PE Authorities) in APEC Economies (which may include Privacy Commissioners' Offices, Data Protection Authorities or Consumer Protection Authorities that enforce Privacy Laws);
- provide mechanisms to promote effective cross-border cooperation between authorities in the enforcement of CBPR program requirements and privacy laws generally, including through referrals of matters and through parallel or joint investigations or enforcement actions; and
- encourage information sharing and cooperation on privacy investigation and enforcement with PE Authorities outside APEC (including by ensuring that the CPEA

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<sup>11</sup> <http://webresources.apec.org/>

can work seamlessly with similar arrangements in other regions and at the global level).

26. The CPEA creates a framework for the voluntary sharing of information and provision of assistance for information privacy enforcement related activities. Any PE Authority in an APEC Economy may participate. Participating PE Authorities will contact each other for assistance or to make referrals regarding information privacy investigations and enforcement matters that involve each other's Economies. For example, during an investigation, a PE Authority in Economy X may seek the assistance of a PE Authority in Economy Y, if certain evidence of the alleged privacy violation (or the entity being investigated) is located in Economy Y. In that case, the PE Authority in Economy X may send a Request for Assistance to the point of contact in the PE Authority in Economy Y. The PE Authority in Economy Y may then consider the matter and provide assistance on a discretionary basis.

## **CBPR PROCESS OVERVIEW**

27. The following provides an overview of the process for participation by APEC Economies in the CBPR System, the process for the recognition of Accountability Agents by APEC Economies, the process for the certification of an organization, and the role Privacy Enforcement Authorities.

### ***Process for Participation and Discontinuation of Participation by APEC Economies in the CBPR System***

28. To participate in the CBPR System, an Economy must first satisfy the conditions in 2.2 of the Charter of the Joint Oversight Panel. The Economy then nominates one or more Accountability Agents for APEC recognition or notifies the ECSG Chair of receipt of application(s) for such recognition. Once at least one Accountability Agent has been recognised in relation to that Economy, organisations will be able to commence participation in the CBPR system in the Economy. Where only one Accountability Agent operates in an Economy and that Accountability Agent ceases to function in that capacity, the Economy's participation in the CBPR will be suspended upon a consensus determination by all other APEC Economies (excluding the Participating Economy in question) and the certification of those organizations certified by that Accountability Agent will be terminated until such time as the Economy is able to again fulfil the requirement for participation in the CBPR System, at which time any previously-certified applicant organizations should complete a new certification process.

29. An Economy may cease participation in the CBPR System at any time by giving one month's written notice to the APEC ECSG Chair. In the event that a Participant discontinues participation in the CBPR System, any APEC-recognized Accountability Agents in that Economy should terminate participation in the CBPR System in that Economy. This requirement should be incorporated into the agreements between the Accountability Agent and any organizations they certify as CBPR compliant.

### ***Process for Recognition of Accountability Agents***

30. An Economy can nominate an Accountability Agent operating within its jurisdiction for APEC recognition or, where appropriate, notify the Joint Oversight Panel that they have received a request for such recognition and submit the received application and associated documentation for consideration (*see para 54*). In either case, the Economy should describe the relevant domestic laws and regulations which may apply to the activities of Accountability Agents operating within their jurisdiction and the enforcement authority associated with these laws and regulations. Where the Privacy Enforcement Authority of an Economy assumes the role of Accountability Agent, the nomination may be done by the Economy with a confirmation that the Privacy Enforcement Authority is a participant of the CPEA as well as a summary of how that privacy enforcement authority may enforce the program requirements of the CBPR system.

31. In those instances where an Economy proposes to make use of an Accountability Agent in another participating APEC Economy to certify an applicant organization principally located within its borders, the proposing Economy should notify the Joint Oversight Panel of this proposal. The proposing Economy should describe to the Joint Oversight Panel the relevant domestic laws and regulations which may apply to the activities



of Accountability Agents operating within their jurisdiction and the enforcement authority associated with these laws and regulations.

32. All applications for recognition will include a signed attestation by the Accountability Agent and all necessary supporting documentation as stipulated in the Accountability Agent recognition criteria.

33. Upon receipt of a request for recognition pursuant to paragraphs 30 or 31, the Joint Oversight Panel will commence a review of the required documentation and request any additional information necessary to ensure the recognition criteria have been met. When the Joint Oversight Panel has completed this review process they will issue a recommendation to APEC Economies as to whether or not to recognize the Accountability Agent. Economies will consider the Accountability Agent's request for recognition, considering the recommendation of the Joint Oversight Panel. If no objections are received within a set deadline, the request will be considered to be approved by the ECSG.

34. Any APEC Economy has the right to reject the request of an Accountability Agent for such recognition.

35. The Joint Oversight Panel can receive complaints regarding the conduct of a recognized Accountability Agent by Economies, businesses, consumers or others at any time. Where appropriate, the Joint Oversight Panel can request the relevant Privacy Enforcement Authority or other relevant Authority in the Economy where the Accountability Agent is located to investigate the compliance of that Accountability Agent with their obligations established in the Recognition Criteria. The Privacy Enforcement Authority or other relevant Authority may investigate and take remedial action as necessary at its discretion as authorized under their domestic law. The Joint Oversight Panel may consider and recommend suspension of an Accountability Agent's recognition at any time.

36. APEC recognition will be limited to one year from the date of recognition, one month prior to which, an Accountability Agent should re-apply for APEC recognition, following the same process described above. During this time the Accountability Agent's recognition will continue.

37. When considering their recommendation to APEC Economies, the Joint Oversight Panel will consider any relevant information including complaints received regarding the conduct of a recognized Accountability Agent by Economies, businesses, consumers or others in the previous year as well as any investigation request by the Joint Oversight Panel to Privacy Enforcement Authorities or other relevant Authorities.

### ***Process for Certification of Organizations***

38. Applicant organizations should make use of Accountability Agents located within the jurisdiction in which the applicant organization is primarily located or an Accountability Agent recognized pursuant to paragraph 31.

39. Once an applicant organization selects and contacts an eligible APEC-recognized Accountability Agent, the Accountability Agent will provide the self-assessment questionnaire to the organization for completion and will review the answers and any supporting documentation based on its assessment guidelines or make use of APEC-recognized documentation and review procedures.

40. The proposed application process would be iterative and allow for back and forth discussions between the applicant organization and the Accountability Agent.

41. The Accountability Agent Recognition Criteria describe the role of Accountability Agents as follows:

- The Accountability Agent is responsible for the self-assessment and compliance review phases of the CBPR System accreditation process. Applicant organizations will be responsible for developing their privacy policies and practices and may only participate in the CBPR System if these policies and practices are certified by the relevant Accountability Agent to be compliant with the requirements of the CBPR System. It is the responsibility of the Accountability Agent to certify an organization's compliance with these requirements.
- The self-assessment questionnaire and assessment guidelines are publicly-available documents and prospective applicant organizations will have access to the guidelines so that they can see how their responses to the self-assessment questionnaire will be assessed. In considering how best to assist prospective applicant organizations, a recognized Accountability Agent may wish to develop additional documentation outlining their review process.

### ***Role of the Privacy Enforcement Authority***

42. The CPEA defines 'Privacy Enforcement Authority' as any public body that is responsible for enforcing Privacy Law, and that has powers to conduct investigations or pursue enforcement proceedings. 'Privacy Law' is then defined as laws and regulations of an APEC Economy, the enforcement of which have the effect of protecting personal information consistent with the APEC Privacy Framework.

- The Privacy Enforcement Authority must be able to review a CBPR complaint/issue if it cannot be resolved by the participating organization in the first instance or by the Accountability Agent and when appropriate, investigate and take enforcement action. The Privacy Enforcement Authority has the discretion to decide whether or not to deal with a Request for Assistance made by another Privacy Enforcement Authority.
- CPEA participation is the predicate step to any Economies' involvement in the CBPR System as the CPEA establishes that the Economy has a law in place "the enforcement of which, has the effect of implementing the APEC Privacy Framework."

## **THE CBPR SYSTEM AND DOMESTIC LAWS AND REGULATIONS**

43. The CBPR System does not displace or change an Economy's domestic laws and regulations. Where there are no applicable domestic privacy protection requirements in an Economy, the CBPR System is intended to provide a minimum level of protection.

44. Participation in the CBPR System does not replace a participating organization's domestic legal obligations. The commitments which an organization carries out in order to participate in the CBPR System are separate from any domestic legal requirements that may be applicable. Where domestic legal requirements exceed what is expected in the CBPR System, the full extent of such domestic law and regulation will continue to apply. Where requirements of the CBPR System exceed the requirements of domestic law and regulation,

an organization will need to voluntarily carry out such additional requirements in order to participate. Nonetheless, Privacy Enforcement Authorities in that Economy should have the ability to take enforcement actions under applicable domestic laws and regulations that have the effect of protecting personal information consistent with the CBPR program requirements.

45. For the purposes of participation in the CBPR System, an Accountability Agent's verification will only apply to an organization's compliance with its CBPR commitments, not its compliance with applicable domestic legal requirements.

46. Where an Economy's domestic laws and regulations preclude or restrict that Economy's ability to participate in the CBPR System, it is a matter for the Economy to consider whether and how to modify the applicable domestic laws to facilitate participation.

47. It is not the purpose of the CBPR System to direct Economies on whether and how to modify domestic laws and regulations. This is a matter to be addressed through capacity building activities and other guidance run through the Data Privacy Sub-Group.

48. However, when considering whether to participate in the CBPR System, Economies may need to make changes to domestic laws and regulations to ensure the necessary elements of the CBPR System are in place – for example, Economies are to identify an appropriate regulatory authority as defined in the Cross Border Privacy Enforcement Arrangement (CPEA) to act as the privacy enforcement authority in the CBPR System.

## **GOVERNANCE OF THE CBPR SYSTEM**

### ***Objective***

49. The CBPR System requires governance mechanisms that will perform essential operations in the administration and maintenance of the System. In the development of the governance model, a number of basic principles were identified:

- Simplicity;
- Transparency;
- Low cost; and
- Accountability to APEC Economies.

50. As the APEC representative body established to deal with data privacy issues, the Data Privacy Sub-Group is responsible for the governance of the CBPR System. Governance mechanisms should enable the day-to-day running of the CBPR System without the continuous involvement of the Sub-Group, which only meets twice a year.

51. As APEC is a non-treaty organization with a small full-time staff, governance of the CBPR System cannot impose onerous duties on either the Secretariat or Economies.

### ***Functions of the Governance Model***

52. Regardless of these limitations, the governance model should nonetheless deal with the essential administrative functions required for the CBPR System to effectively operate. These essential functions include:

- Developing and maintaining a staffing and revenue structure to support the CBPR System;
- Managing the APEC-hosted compliance directory (*see para 14*);
- Facilitating participation in the CBPR System by APEC Economies, including through capacity-building activities;
- Assessing and monitoring the compliance of recognized Accountability Agents against the Recognition Criteria;
- Managing the Cross Border Privacy Enforcement Arrangement and associated documents and procedures; and
- Developing education materials to facilitate a region-wide understanding of the elements of the CBPR System and its program requirements.

### ***Joint Oversight Panel***

53. In recognition of these requirements, Economies are to establish a Joint Oversight Panel made up of nominated Economies approved by, and operating on behalf of, the Data Privacy Sub-Group. This model provides a clear line of authority for the operation of the CBPR System from the ECSG through the Data Privacy Sub-Group, in which all APEC Economies can participate.

54. The core functions of the Joint Oversight Panel are set out in 6.2 of *Charter of the APEC Cross-Border Privacy Rules System Joint Oversight Panel* (Annex A)

55. To assist the Joint Oversight Panel with the identified core functions, working groups on certification and enforcement should be established. The working groups are to provide representative oversight and leadership for the certification, operations, and enforcement of the CBPR System. The Joint Oversight Panel may establish more working groups as needed.

56. In addition to the foregoing, it is necessary to establish a process through which the Data Privacy Sub-Group can monitor, evaluate and review the entirety of the CBPR System. This process should allow Economies to develop and revise the CBPR System in response to practical experience and the changing needs of Economies.

## **SUCCESS CRITERIA FOR THE CBPR SYSTEM**

57. The CBPR System implements the Data Privacy Pathfinder. The CBPR System should recognise and incorporate the core APEC principles of voluntarism, comprehensiveness, consensus-based decision making, flexibility, transparency, open regionalism and differentiated implementation timetables for developed and developing Economies.

58. In recognition of these core APEC principles, the CBPR System should satisfy the objectives set out in the Data Privacy Pathfinder:

- promote a conceptual framework of principles of how cross-border privacy rules should work across APEC Economies;
- develop and support consultative processes between regulators, responsible agencies, lawmaking bodies, industry, third party solution providers, consumer and privacy representatives;
- produce practical documents and procedures that underpin cross-border privacy rules;
- explore ways in which various documents and procedures can be implemented in practice; and
- promote education and outreach on how an accountable CBPR System works.

59. There are three key specific criterion for judging success of both the individual projects and the Pathfinder as a whole:

- the effective protection of consumer personal information privacy in a system trusted by consumers;
- that implementation can be flexible enough to be adapted to the particular domestic legal environment of APEC Economies, while providing certainty for system participants; and
- the regulatory burden on business is minimised while allowing business to develop and comply with effective and coherent rules for cross-border flows of personal information.

## **CHARTER OF THE APEC CROSS-BORDER PRIVACY RULES SYSTEM JOINT OVERSIGHT PANEL**

### **1. CHARACTER OF THIS DOCUMENT**

1.1 This Charter is to be read consistently with the APEC Privacy Framework.

Nothing in this Charter is intended to:

- i. Create any binding obligations on APEC Economies and/or their government agencies, or affect their existing rights and obligations under international or domestic law;
- ii. Impede any governmental activities authorized by domestic or international law;
- iii. Create any obligations or expectations of cooperation that would exceed a CBPR Participant's scope of authority and jurisdiction; or
- iv. Create obligations or expectations for non-participating government agencies.

### **2. COMMENCEMENT OF PARTICIPATION IN THE CROSS BORDER PRIVACY RULES SYSTEM**

2.1 This Charter will take effect upon endorsement by the Electronic Commerce Steering Group (ECSG).

2.2 An APEC Member Economy is considered a Participant in the Cross Border Privacy Rules (CBPR) System (CBPR Participant), after the Chair of the Electronic Commerce Steering Group (ECSG Chair) has notified the Economy that the following conditions have been met:

- (i) The Economy's ECSG delegation, or appropriate governmental representative, submits to the ECSG Chair a letter indicating its intention to participate and confirming that at least one Privacy Enforcement Authority in that Economy is a participant in the APEC Cross Border Privacy Enforcement Arrangement (CPEA);
- (ii) The Economy indicates its intention to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 6.2;
- (iii) The Economy's ECSG delegation, or appropriate governmental representative, after consulting with the Joint Oversight Panel, submits

to the Chair of the ECSG an explanation of how the CBPR System program requirements may be enforced in that Economy; and

- (iv) The Joint Oversight Panel submits to the Chair of the ECSG a report as to how the conditions in (i)-(iii) above have been satisfied.

### 3. TRANSPARENCY

- 3.1 A CBPR Participant will provide notice to the APEC ECSG Chair of any new laws or regulations and any amendments to existing laws or regulations as well as all other developments that may affect the operation and enforcement of the CBPR System.
- 3.2 The APEC ECSG Chair will promptly notify APEC Economies of any notification received pursuant to paragraph 3.1.

### 4. TERMINATION OF PARTICIPATION

- 4.1 A CBPR Participant may cease participation in the CBPR System by giving one month's written notice to the APEC ECSG Chair.
- 4.2 The APEC ECSG Chair will promptly notify APEC Economies of any notification received pursuant to paragraph 4.1.
- 4.3 In the event that a CBPR Participant terminates participation in the CBPR System, or is suspended or terminated from the CBPR System, recognition of any previously recognized Accountability Agent to operate in that Participant's Economy will automatically suspend or terminate and the certification of those organizations certified by that Accountability Agent will be terminated until such time as the Economy is able to again fulfil the requirement for participation in the CBPR System, at which time any previously-certified applicant organizations should complete a new certification process.

### 5. CAUSE FOR SUSPENSION OR TERMINATION

- 5.1 Participation by an APEC Economy in the CBPR System may be suspended or terminated by a consensus determination by the other APEC Economies that one or more of the following conditions have been met:
  - i. Revocation, repeal or amendment of any domestic laws and/or regulations having the effect of making participation in the APEC CBPR System impossible;
  - ii. The CBPR Participant's Privacy Enforcement Authority as defined in paragraph 4.1 of the CPEA ceases participation pursuant to paragraph 8.2 of the CPEA; or
  - iii. Dissolution or disqualification of a previously recognized Accountability Agent where this function is provided exclusively in the CBPR Participant's Economy by that entity.



- 5.2 A request for a consensus determination that any condition identified in paragraph 5.1 has been met may be made by any CBPR Participant at any time.

## 6. JOINT OVERSIGHT PANEL

- 6.1 The ECSG hereby establishes a Joint Oversight Panel, consisting of representatives from three APEC Economies, for a two-year appointment, subject to ECSG endorsement and the terms set out in paragraph 7.2. The ECSG will endorse a Chairperson for a two-year appointment from these three Economies. The Joint Oversight Panel will meet at the request of the ECSG, or more frequently as decided by CBPR Participants to assist in the effective implementation of the CBPR System. The ECSG may appoint succeeding panels as it may deem appropriate.
- 6.2 The Joint Oversight Panel will perform the following functions:
- i. Engage in consultations with those Economies that have indicated an intention to participate in the CBPR System and issue a report as to how the conditions set out in paragraph 2.2 have been met;
  - ii. Make recommendations to the APEC Economies whether to recognize an applicant Accountability Agent as compliant with the requirements of the CBPR System. In making such recommendations, the Joint Oversight Panel should be satisfied of the following:
    - a) The applicant Accountability Agent has a location in a CBPR Participant's Economy or is subject to the jurisdiction of the relevant privacy enforcement authority in that Economy, and
    - b) The applicant Accountability Agent meets the Recognition Criteria established under the CBPR System and has provided all necessary documentation as requested by the Joint Oversight Panel;
  - iii. Consider and recommend suspension of the recognition of an Accountability Agent at any time;
  - iv. Collect all case notes received by recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;
  - v. Collect complaint statistics from recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;
  - vi. Advise recognized Accountability Agents whether or not to withdraw from particular engagements if a potential conflict is alleged, considering any evidence provided by the recognized Accountability Agents as to internal structure and procedural safeguards that are in place to address any potential and actual conflicts of interest;

- vii. Verify that each recognized Accountability Agent complies with the re-certification process as required under the Accountability Agent Recognition Criteria;
  - viii. Review any reported material change by the recognized Accountability Agent (e.g. ownership, structure or policies) as required under the Accountability Agent Recognition Criteria and report to APEC Economies its recommendation as to whether such change impacts the appropriateness of recognizing the Accountability Agent as compliant with the requirements of the CBPR System;
  - ix. Facilitate the review and edit of primary documentation associated with the CBPR System when necessary in conjunction with APEC Economies; and
  - x. Perform all other functions as identified and decided by APEC Economies as necessary to the operation of the CBPR System.
- 6.3 All recommendations of the Joint Oversight Panel will be made by simple majority. A dissenting member of the Joint Oversight Panel may circulate its dissent from the majority's recommendation on any matter to APEC Economies.
- 6.4 In no circumstance should a member of the Joint Oversight Panel participate in any of the activities under 6.2 when the Accountability Agent is a public (or governmental) entity in the member's Economy or any of the activities under 2.2 where the interested Economy is a member of the Joint Oversight Panel. In such instances, the Data Privacy Subgroup Chair will designate another APEC Economy to temporarily function as a member of the Joint Oversight Panel.
- 6.5 The Joint Oversight Panel may establish working teams to address each of the above functions and request assistance from the APEC Secretariat or APEC Economies as necessary.
- 6.6 Recommendations by the Joint Oversight Panel will take effect upon endorsement by the ECSG.

## 7. ADMINISTRATIVE MATTERS

- 7.1 The Chairperson of the Joint Oversight Panel will provide a summary report detailing all activities carried out by the Joint Oversight Panel under paragraph 6 to the Data Privacy Subgroup Chair no later than one month in advance of each Data Privacy Subgroup meeting.
- 7.2 The initial terms of membership for the initial Joint Oversight Panel are as follows:
- i. One Chair to be appointed for a two-year term;
  - ii. One member to be appointed for an 18 month-term, and;

iii. One member to be appointed for a one-year term.

7.3 Upon expiration of the initial term, each appointment will have a two-year term subject to re-appointment at the discretion of the ECSG based on 6.1.