

Report on the Meeting of the APEC ECSG Information Privacy Subgroup

**3 June 2005
Hong Kong, SAR, China**

The APEC ECSG Information Privacy Subgroup (“subgroup”) met on June 3, 2005 in Hong Kong, SAR, China. The following member economies and organizations were represented at the meeting: Australia; Canada; Hong Kong, China; Republic of Korea; Mexico; New Zealand; Singapore; Thailand; Chinese Taipei; United States; Vietnam and the Global Business Dialogue on Electronic Commerce (GBDe). In addition, Messrs. Malcolm Crompton and Peter Ford, consultants to the Subgroup’s project to implement the APEC Privacy Framework, participated in the meeting, which was chaired by Mr. Peter Ferguson of Canada. The Agenda for the subgroup meeting is attached hereto as Appendix A.

Assessment of the First Technical Assistance Seminar to Implement the APEC Privacy Framework

After his introductory remarks, Mr. Ferguson invited Messrs. Crompton and Ford to lead a discussion to assess the first technical assistance seminar to implement the APEC Privacy Framework (“Framework”). The two-day seminar, which focused on domestic implementation of the Framework, immediately preceded the June 3 sub-group meeting. Approximately 90 government, business and civil society representatives from 15 member economies attended the two-day seminar, which was co-sponsored by Hong Kong’s Office of the Privacy Commissioner for Personal Data. Messrs. Crompton and Ford prepared a report on the first seminar. This report is attached hereto as Appendix B.

As noted in the consultants’ report, on the basis of consideration by the privacy subgroup, several items arising out of the domestic implementation seminar should be addressed by working groups led by delegates from several identified sectors and in accordance with the timetable agreed upon by the subgroup.

In addition, it was agreed that the second technical assistance seminar to implement the Framework should occur during the week of September 5, on the margins of the third Senior Officials Meeting and related events, including the meeting of the ECSG and its sub-groups. Mr. Jeff Rohlmeier, the Project Overseer for the technical assistance seminars, will work closely with the project consultants and representatives from the Republic of Korea in order to coordinate the second seminar, which will focus on international implementation of the Framework.

Discussion Concerning Integration of Future Work Agenda on International Implementation into APEC Privacy Framework “Part B”

Next, the subgroup discussed a United States proposal to expand the language of the Framework’s future work agenda on international implementation (attached hereto as Appendix C). At their second meeting in February, the APEC Senior Officials agreed to the subgroup’s request that the international future work agenda be integrated into the Framework itself as “Part B”. The subgroup must now determine how to properly integrate “Part B” and whether its language should be expanded.

The subgroup members engaged in a discussion concerning the U.S. proposal, with Hong Kong providing detailed comments concerning the U.S. proposal. It was later agreed that a working group comprised of Australia, Canada, New Zealand, Hong Kong, Chinese Taipei and the United States would further investigate possible ways to integrate “Part B” into the Framework and possibly expand the “Part B” language. Any member economy that would like to comment on the United States proposal is welcome to do so and is asked to forward any input to the attention of Mr. Jeff Rohlmeier, jeff_rohlmeier@ita.doc.gov, by 24 June 2005.

Cross-Border Privacy Rules

The subgroup then discussed the progress of work related to the third component of the current future work agenda to promote international implementation (“Part B”), the possible development and recognition of organizations’ cross-border privacy codes (rules) across the APEC region. During ECSG 11 in Seoul in February, the United States tabled a paper entitled “Implementation of the APEC Privacy Framework: Global Solutions for Cross Border Data Transfers”. The paper presented some initial ideas about how cross border codes of conduct or global privacy rules (“Corporate Global Privacy Rules”) can serve as a way to protect personal data no matter where the data are located throughout the world. In February, the subgroup concluded that it would be best to identify several key concepts imbedded in the paper and to address those issues in the context of one or two implementation models.

Pursuant to those models, the United States delegation (in consultation with a working group comprised of Australia, Canada, and the Republic of Korea) developed a set of diagrams (and a narrative) (both attached hereto as Appendix D) depicting the cross-border flow of personal information in a consumer-business context, as well some of the potential legal, jurisdictional and logistical considerations that must be met as the information is transferred.

Mr. Alhadeff of the U.S. delegation walked the subgroup through the diagrams and received comments from several subgroup participants. Afterward, Mr. Crompton recommended that a pathfinder/working group (comprised of business representatives and regulators) be established in order to further examine this concept. In addition, Mexico indicated that it would like to join the aforementioned working group on this

topic and Hong Kong indicated that it would consider providing guidance and advice as necessary. Any member economy that would like to comment on the information flow diagrams is welcome to do so and is asked to forward any input to the attention of Mr. Jeff Rohlmeier, jeff_rohlmeier@ita.doc.gov, by 24 June 2005.

Individual Action Plans (IAPs) as a Means to Achieve Implementation of the APEC Privacy Framework

Afterward, the subgroup briefly discussed the possible development of Individual Action Plans (IAPs) as a means for each member economy to implement the Framework. Hong Kong provided detailed comments on the suggested draft IAP template that was tabled by the United States. In addition, Australia suggested that, rather than duplicate efforts, member economies could simply transpose and update the text of their responses from the earlier ECSG privacy survey into the IAP process. Also, the subgroup members agreed that the member economies will first need to determine what level of detail will be required for responses in the IAPs. Finally, Australia, Canada, Hong Kong and the United States agreed to form a working group to pursue this concept.

Information Sharing Among Jurisdictions

The subgroup members briefly discussed information sharing among jurisdictions, the first component of the current version of the future work agenda on efforts to promote international implementation (“Part B”). Hong Kong has provided detailed comments on the United States proposal to expand the language on this topic during integration of the future work agenda into the Framework as “Part B”. As previously mentioned, any member economy that would like to comment on the proposed expanded “Part B” language is welcome to do so and is asked to forward any input to the attention of Mr. Jeff Rohlmeier, jeff_rohlmeier@ita.doc.gov, by 24 June 2005.

Cooperative Arrangements Between Privacy Investigation and Enforcement Agencies

Next, the subgroup members briefly discussed cooperative arrangements between privacy investigation and enforcement agencies, the second component of the current version of the future work agenda on efforts to promote international implementation (“Part B”). New Zealand noted that there is an existing affiliation of western Asia-Pacific privacy enforcement/oversight agencies called PANZA+ and that the group is planning new initiatives on cooperative arrangements between agencies, etc. As previously mentioned, any member economy that would like to comment on the proposed expanded “Part B” language is welcome to do so and is asked to forward any input to the attention of Mr. Jeff Rohlmeier, jeff_rohlmeier@ita.doc.gov, by 24 June 2005.

Update on International Initiatives to Develop Improved Privacy Notices

During the first technical assistance seminar to implement the APEC Privacy Framework, Mr. Martin Abrams of the Center for Information Policy Leadership in the United States provided an update on international efforts to promote the development of “multi-layered” privacy notices. During the subgroup meeting, Mr. Abrams noted that while companies are adopting multilayered notices, they have not yet reached “critical mass”. Mr. Abrams recommends that the APEC ECSG develop a coordinating committee to encourage development of multi-layered notices; sponsor a workshop on notices; develop tools for developers of privacy notices; and develop guidance for businesses on implementing privacy notices. Subgroup members appeared receptive to several of Mr. Abrams’ suggestions and it was agreed that the topic of improved notices will again be raised at the subgroup’s next meeting and within its discussions on possible future work activities.

Conclusion: Possible Future Work

Finally, the subgroup discussed possible future work projects, with the members essentially reviewing earlier agenda items and the various working groups that have been established. In particular:

- Subgroup members were reminded to forward any comments on the “Part B” to Jeff Rohlmeier by June 24.
- Also, member economies should feel free to provide input into the cross-border privacy rules concept and, in particular, identify any gaps that may exist in the information flow diagrams.
- Per Mr. Abrams’ suggestion, Australia, Canada, Hong Kong, New Zealand, the United States, and Mr. Crompton agreed to serve on a “coordinating committee” to examine possible ways that the improved privacy notices work can be addressed within the APEC ECSG;
- The subgroup should establish a timeframe on the development of Individual Action Plans (IAP) as a possible means to further implementation of the APEC Privacy Framework;
- The ECSG should immediately begin to promote the APEC Privacy Framework to other APEC working groups;
- New Zealand suggested that the APEC Secretariat should have an institutional mechanism in place to ensure that the Secretariat itself is adhering to the Framework;
- The United States suggested that there also be a mechanism within individual member economies to promote awareness of the Framework;
- The ECSG should consider the development of more implementation seminars as well as promotional materials and a discussion paper to further implementation of the Framework.

The next meeting of the APEC ECSG Information Privacy Subgroup will be held during the week of September 5, 2005, on the margins of the ECSG 12 meeting, in the Republic of Korea.

APPENDIX A

***AGENDA for APEC ECSG
Information Privacy Sub-Group Meeting***

Friday, June 3, 2005

**Location: Hong Kong Convention and Exhibition Centre,
Room 406 and 407, 1 Harbour Road,
Wan Chai, HONG KONG**

8.30 am – 9.00 am: Registration

9.00 am – 9.15 am: Welcome/Introduction

Mr. Peter Ferguson, Director, Electronic Commerce Policy, Electronic Commerce Task Force, Industry Canada; and Chair of APEC ECSG Information Privacy Sub-Group

9.15 am – 10.00 am: Assessment of First Technical Assistance Workshop/Discussion Second Technical Assistance Workshop

Messrs. Malcolm Crompton and Peter Ford will lead a discussion to assess the outcomes of the first technical assistance seminar to implement the APEC Privacy Framework and to plan ahead for the second seminar.

10.00 am – 10.30 am: Discussion Concerning Integration of Future Work Agenda on International Implementation into APEC Privacy Framework “Part B”

10.30 am – 10:45 am: Break

10.45 am – 12.15 pm:

Cross-Border Privacy Codes

The working group established during ECSG 11 in Seoul will discuss the progress of its work to develop implementation models for the APEC cross-border privacy codes concept and will invite privacy sub-group feedback on next steps.

12.15 pm – 12.45 pm:

Individual Action Plans (IAPs) as a Means to Achieve Implementation of the APEC Privacy Framework

12.45 pm – 2:30 pm:

Lunch

2.30 pm – 3.00 pm:

Information Sharing Among Jurisdictions

Taking into consideration existing, related international arrangements, Member Economies will continue its discussion related to the possible development of a multilateral mechanism for promptly, systematically and efficiently sharing information among APEC Member Economies.

3.00 pm – 3.30 pm:

Cooperative Arrangements Between Privacy Investigation and Enforcement Agencies

Member Economies will continue its discussion related to the possible development of cooperative arrangements between privacy investigation and enforcement agencies of Member Economies.

3.30 pm – 3:45 pm:

Break

3.45 pm – 4.15 pm:

Update on International Initiatives to Develop Improved Privacy Notices

*Mr. Martin Abrams
Executive Director
Center for Information Policy Leadership*

4.15 pm – 5.00 pm:

Conclusion: Possible Future Work (including coordination with other multilateral organizations)

7.30 pm:

The Office of the Privacy Commissioner for Personal Data, Hong Kong, will host a dinner for all ECSG Privacy Sub-Group meeting participants at Peking Garden, Base 1, 16-20 Chater Road, Alexandra House, Central Hong Kong.

APPENDIX B

REPORT ON APEC ECSG TECHNICAL ASSISTANCE SEMINAR: DOMESTIC IMPLEMENTATION OF THE APEC PRIVACY FRAMEWORK

1-2 June 2005

APEC has funded two seminars on the implementation of the APEC Privacy Framework that was endorsed by APEC Ministers in November 2004. The first seminar was held in Hong Kong on 1-2 June 2005 and was primarily focused on helping APEC economies consider the practicalities of implementing the Framework at the domestic level, within their economies. The second seminar is scheduled to take place in Korea in September and will be primarily focused on applying the Framework to flows of personal information between APEC economies.

Some 90 people from 15 of the APEC economies attended the seminar.

The focus of this first seminar was focused on the exchange of experiences and reference to practical examples to help APEC economies consider how they might apply the APEC Privacy Framework to domestic implementation of privacy protection. It was recognised at the outset that some economies have had privacy protection in place for several years while the subject is new to others. The structure and themes of the seminar were derived from the structure and themes of the Framework itself.

The seminar was planned with the assistance of two consultants, Malcolm Crompton, Managing Director of Information Integrity Solutions and former Australian Privacy Commissioner, and Peter Ford, former Chair of the Privacy Sub-Group of the Electronic Commerce Security Group. Speakers were drawn from a range of APEC economies with a mix of policy makers, regulators, business and consumer representatives and other civil society representatives and an effort was made to achieve a gender balance.

Mapping the environment

The Preamble to the Framework notes Ministers' endorsement of the 1998 Blueprint for Action on Electronic Commerce and their references to the need to 'build trust and confidence in safe, secure and reliable communication, information and delivery systems, and which address issues including privacy..'

References to aspects of globalisation, the core values of the OECD's 1980 Privacy Guidelines and to the need to take account of law enforcement imperatives are also included.

The seminar began with a survey of the environmental changes affecting the way we collect, use and store information, the expanded geographies covered and entities involved as well as the privacy issues that need to be considered. Two particular changes that were noted were the potential benefits offered to both business and consumers by the growth of electronic commerce and the new global security environment following the events of 11 September, 2001. The implications of these changes were drawn out by speakers from backgrounds in public policy, business, law enforcement and civil society. Discussion of the issues in plenary session illuminated challenges that need to be taken into account in developing detailed measures for privacy protection.

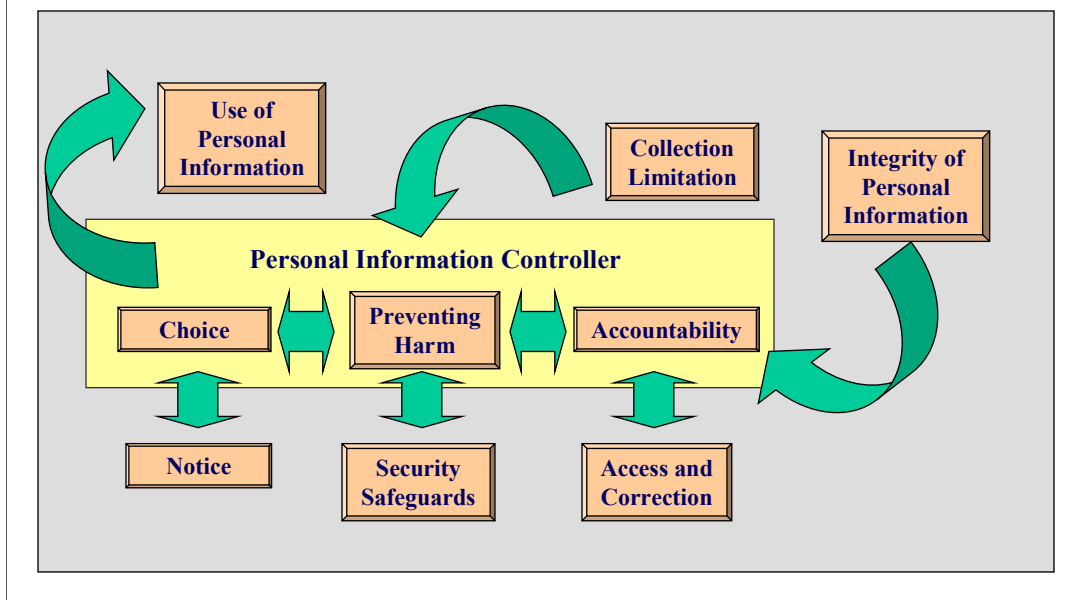
The particular focus on electronic commerce was seen as a positive aspect in the application of the Framework. At the same time, it was acknowledged that the Privacy Principles have general application. In this connection, some speakers noted that the Framework provides some guidance in applying the Principles.

The Principles and their interrelationship

Discussion of the Privacy Principles themselves was introduced through a general overview from the perspective of policymaking, regulation and business practices and carried through in an intensive workshop on particular cases.

The principles were presented in a way that uniquely indicated their relationship with each other. This is shown in the following diagram which was prepared by the Acting Commissioner for Personal Data of Hong Kong, Tony Lam.

APEC Privacy Principles: Relationship



Double click on the following icon to see these relationships in more detail.



C:\APEC Privacy Principles.ppt

The cases were drawn from the collective experience of those economies with privacy regimes and were revised to remove any features that related only to a particular jurisdiction. They dealt with issues of general concern to APEC economies such as direct marketing, the security of, and access to, records of personal information, the collection of personal information, the disclosure of personal information in public emergencies, the refusal of services where such refusal is related to privacy issues, remedies for privacy breaches and the interplay between privacy and law enforcement.

Consultation with relevant bodies

The need to hold discussions with relevant bodies about implementation of the Framework, including law enforcement and security agencies, is referred to in Part IV of the Framework (Part A – Guidance for Domestic Implementation).

Ways of undertaking consultation on the domestic implementation of the Privacy Principles were outlined and analysed in detail. The advantages and disadvantages of different methods of consultation were canvassed together with their suitability

to different situations. For example, it was noted that, while it is important to maintain transparency of process, in some particular circumstances it may be more appropriate to hold closed meetings so as to receive confidential information.

The extensive domestic consultation that has been carried out within Australia was outlined as an example of the kind of steps that policy makers may wish to consider.

Stakeholder consultation in developing a domestic implementation

Business and Consumer/Civil Society

The Framework exhorts economies to engage in dialogue between the public and private sectors.

Opportunities for cooperation between the public and private sectors in implementing privacy protection were underlined by several speakers. The seminar was told that achieving cooperation may sometimes be difficult but it is essential to effective privacy protection. It is also important to the success of any program to engage the public on domestic privacy protections.

The seminar was informed of Thailand's experience in cooperation between public and private sectors and of the work undertaken by the International Chamber of Commerce, Global Business Dialogue and by individual businesses in support of government initiatives.

Educating and Publicizing

The Framework talks of the need to seek the cooperation of non-government entities, to notify individuals of their rights and to educate personal information controllers and individuals.

The seminar was informed of a range of measures taken by the Hong Kong Privacy Commissioner's Office to promote effectiveness, efficiency and ethics in public education and to measure the results. Experience of businesses and regulators in developing short privacy notices to advise consumers of their rights was also discussed in some detail. Consumer representatives spoke of the need to ensure that tools to promote privacy are 'consumer friendly'.

Remedies

The Framework urges economies to adopt an appropriate array of remedies for privacy violations.

The effectiveness of particular remedies was examined in the light of experience from economies with privacy regimes, particularly Korea and the United States. The challenge of matching possible remedies to particular factual situations received close attention. The merits of alternative remedies in the context of Alternative Dispute Resolution (ADR) mechanisms and desirable features of privacy protection regimes were also discussed.

The ADR mechanism in Korea is very well developed and there is good evidence that it is effective. There are about 50 ADR bodies in Korea. The Personal Information Dispute Mediation Committee (PICO) deals with complaints about the mishandling of personal information. It actively encourages the parties to a complaint to settle the dispute with each other directly. If this fails, it mediates the dispute. Between January and April 2005, PICO had received 6079 inquiries and other contact and it mediated in 243 disputes. Out of this, the outcome of the mediation was accepted in 239 (98%) of the disputes.

Reporting/Issues

The Framework briefly provides for economies to prepare ‘Individual Action Plans’ for reporting purposes.

Mechanisms for reporting on domestic implementation of the Privacy Principles were further canvassed. At the time the seminar was held, the reporting mechanism had not been decided upon by the ECSG and the discussions proceeded on the basis that they could contribute to the formulation of an appropriate mechanism by the committee. It was noted that the Framework provides a structure for reporting and that there is an opportunity for those economies which do not yet have privacy regimes in place to ‘leap frog’ over those that have. The experience of Mexico and the Philippines in developing privacy law in the context of electronic commerce was briefly outlined.

Conclusion on how objectives were met.

There was widespread agreement among participants that the objective of the seminar, were met. Participants considered that they had a much improved understanding of the APEC privacy Framework. Economies with an established domestic privacy framework and those considering establishing one considered that they had learned about a number of practical ways of implementing and improving such a framework, based on actual experiences in other economies.

Ways Forward

The incomplete ‘Future Work Agenda’ set out in the Framework provides some points of reference for discussions on ways forward and the relevance of this to

the planning for the international technical assistance seminar was noted. Issues for consideration in that seminar were identified for consideration by the Privacy Sub-Group meeting that followed the seminar. The outcome of the Sub-Group meeting is set out in the Attachment.

**Attachment to Report on
Domestic Implementation Seminar**

Work Agenda

On the basis of consideration by the Privacy Sub-Group, the following items arising out of the domestic implementation seminar should be addressed by working groups led by delegates from the following sectors and in accordance with the following timetable:

Business

- **Further detail the description of the way business currently collects, uses and discloses personal information**
 - first comments by 24 June to project coordinator
 - further milestones to be notified by project coordinator following receipt of first comments
 - interim report to be made available prior to second seminar

Regulators

- **consider means of cooperation between regulators, starting with common forms, reviewing domestic frameworks where applicable to review what mechanisms for implementing the APEC Privacy Framework may be practicable while identifying any legal obstacles to cooperation based on the information flows described by business**
 - first comments by 24 June to project coordinator
 - further milestones to be notified by project coordinator following receipt of first comments
 - interim report to be made available prior to second seminar

Policy makers

- **ensure the Privacy Framework is better known throughout APEC**
 - all delegates to brief their economy's representatives for discussion at SOM in September 2005

- **examine the need to remove any obstacles to cooperation as proposed in draft Future Work Agenda in the Framework endorsed by Ministers**
 - defer, pending report of regulator led working group
- **consider the need for further seminars**
 - defer until evaluation of international assistance seminar
- **publish discussion papers on privacy issues**
 - defer pending completion of higher priority items
- **conduct and publish results of surveys of implementation of APEC Region Privacy Framework**
 - agreed in principle but defer further consideration until the Framework has been in place for 3 years

Participants agreed that the work outlined above would be iterative with many of the deliverables from one group being inputs to other groups and vice-versa. The work above highlights a starting point for each group. It was also highlighted that business, regulators and public policy players would broaden consultations to include all necessary stakeholders in an appropriate manner.

June 2005

APPENDIX C

UNITED STATES DELEGATION'S PROPOSAL TO EXPAND THE LANGUAGE OF THE APEC PRIVACY FRAMEWORK'S FUTURE WORK AGENDA ON INTERNATIONAL IMPLEMENTATION ("PART B")

~~B. FUTURE WORK AGENDA ON EFFORTS TO~~ ~~PROMOTE~~ **GUIDANCE FOR** INTERNATIONAL IMPLEMENTATION

~~The following items are general points of consideration for future work by the APEC
ECSG Privacy Subgroup. Specific details on each of these issues are to be left up to
discussion by the Subgroup in 2005.~~

I. Cross-border cooperation and information sharing

40. Designation of responsible authorities. Member Economies should designate and make known to the other Member Economies the public authorities within their own jurisdictions that will serve as the principal contact points to facilitate cross-border cooperation between economies in connection with investigations and law enforcement cases concerning privacy infringements.

41. Developing cooperative arrangements. Taking into consideration existing international arrangements, Member Economies should endeavor to develop cooperative arrangements and procedures to facilitate cross-border cooperation and information sharing between public authorities in investigations and law enforcement cases involving privacy infringements.

Such cross-border cooperation and information sharing arrangements on privacy investigations and law enforcement cases on privacy should include the following elements:

42. Member Economies should, to the extent permitted by domestic law and policy, develop mechanisms for promptly, systematically and efficiently giving notice in appropriate cases to the designated public authorities of the other Member Economies of investigations or law enforcement cases that target illegal conduct in such other Economies;

43. Taking into consideration existing international arrangements, member Economies should endeavor to develop mechanisms for effectively sharing with the public authorities of other Member Economies the categories of information necessary for successful cooperation in cross-border investigations and law enforcement cases;

44. Cross-border investigations and enforcement activities by the public authorities in one Member Economy should, whenever appropriate, practical, and permitted by domestic law and policy, be coordinated with related investigations and enforcement activities in other Member Economies;
45. Public authorities in Member Economies should prioritize cases for cooperation with public authorities in other Economies based on the severity of the privacy violation, the actual or potential injury involved, as well as other relevant considerations;
46. Public authorities in Member Economies should try to resolve disagreements as to cooperation in cross-border investigations and law enforcement cases.
47. Taking into account existing international arrangements, Member Economies should work toward authorizing the relevant public authorities in Member Economies to provide investigative assistance for public authorities in other Member Economies in their investigations and law enforcement cases;
48. All information sharing arrangements should provide for the appropriate levels of confidentiality protection for information exchanged between Member Economies.
49. The cooperative arrangements should have due regard for the provisions of paragraph 13, above, and should preserve each Member Economy's ability to decline or limit cooperation on particular matters on the grounds that cooperation would be inconsistent with domestic laws, policies or priorities, or available resources;

~~Information sharing among jurisdictions~~

~~Taking into consideration existing, related international arrangements, Member Economies will endeavor to develop a multilateral mechanism for promptly, systematically and efficiently sharing information among APEC Member Economies. This will also include the designation of access point(s) within each Member Economy.~~

~~Cross-border cooperation~~

~~Member Economies should cooperate in relation to making remedies available against privacy infringements where there is a cross-border dimension. In order to contribute to this goal, Member Economies will endeavor to develop cooperative arrangements between privacy investigation and enforcement agencies of Member Economies.~~

II. Cross-border privacy ~~codes~~ rules

50. Member Economies will endeavor to support the development and ~~recognition~~ **acceptance** of organizations' cross-border privacy ~~codes~~ **rules** across the APEC region, **recognizing that organizations would still be responsible for complying with the local data protection requirements, as well as with all civil and criminal laws.** ~~The use of cross-border privacy rules in the APEC Region would entail organizations adhering to the APEC Privacy Principles in their cross-border privacy rules.~~ Such cross-border privacy rules should adhere to the APEC Privacy Principles.
51. ~~Further, the Member Economies should endeavor to develop a mechanism to enable cross-border privacy rules accepted as consistent with the APEC Privacy Principles in one economy to be accepted by other Member Economies.~~
52. ~~Cross-border privacy rules that adhere to the APEC Privacy Principles and are mutually accepted by the participating Member Economies should provide a framework for responsible and accountable transfers of information across the region's participating economies without creating unnecessary barriers to cross-border information flow, including unnecessary administrative and bureaucratic obstacles.~~

APPENDIX D

Please click on links to view the information flow diagrams and narrative:

Diagrams:



robot Document

Narrative:



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