

The APEC Privacy Initiative – a civil society perspective from late 2007

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The APEC Electronic Commerce Study Group Data Privacy Subgroup met in Cairns on 27 June 2007 to progress its work aimed at implementing the APEC Privacy Framework approved by Ministers in 2004. As at previous meetings, there was an associated two-day seminar (attracting around 100 people) to explore progress with the idea of Cross-Border Privacy Rules (CBPR) as a way of implementing the Framework, and to prepare the ground for the Sub-Group's formal proceedings.

A key development was that the need for effective binding enforcement of privacy rules seems now to be generally accepted. APEC is still pursuing a 'choice of approach' model which offers member economies flexibility in how to implement cross-border privacy rules – in recognition of different stages of development and different economic and political contexts.

However, there is now general agreement that four basic elements are required for a CBPR system: self-assessment; compliance review; recognition/acceptance; and dispute resolution/enforcement. While the Subgroup remains keen on the potential role for Trustmarks and other industry schemes in the first three elements, it seems to have been accepted that the final element of dispute resolution and enforcement must ultimately be supported by a mechanism for binding decisions by a government regulator (though not necessarily a dedicated Privacy Commissioner).

This conclusion is consistent with and supported by the recent OECD *Recommendation on Cross-border Co-operation in the Enforcement of Laws Protecting Privacy (June 2007)* which was explained to the meeting by Michael Donohue from the OECD Committee for Information, Computer and Communications Policy.

The meetings also discussed a proposal for an APEC 'Pathfinder' initiative – these enable groups of Member Economies to pilot the implementation of cooperative initiatives prior to their adoption by all APEC Members. This approach allows those Economies who are ready and willing to commit to move faster in specific areas to do so. The proposed Data Privacy Pathfinder has a number of components – development of various guidelines and templates, directories, agreements between enforcement agencies and an overarching pilot project to trial some or all of the other components in practice.

The Pathfinder was accepted by APEC Ministers in Sydney in September and will now be implemented over the next few years. The Subgroup will meet again twice in Peru in 2008 and telephone meetings will also be held periodically to progress the

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work programme. Two workshops are proposed to coincide with the Subgroup meetings in Peru.

The other main development concerns consultation with consumer organisations. I participated in the seminar, chairing two sessions on the role of Trustmarks and Alternative Dispute Resolution, and was also included in the Australian delegation to the Subgroup meeting (as Graham Greenleaf had been at the January meeting).

Privacy International applied earlier this year for guest status at the Cairns meeting, to balance the input from the International Chamber of Commerce (ICC) and the Global Business Dialogue on e-Commerce (GBDe), both of which have guest status giving them a voice at the Subgroup meetings separate from the national delegations. The application was rejected, without explanation. However, during both the seminar and the sub-group meeting, the importance of engagement with civil society and consumer organisations was repeatedly emphasised. In light of this encouraging recognition, international privacy and consumer groups will consider making a further application for guest status at future meetings of the Subgroup.

The APEC Privacy Subgroup held further meetings by telephone and in Vancouver, British Columbia, on cross border privacy rules, in September 2007. This was followed, at the International Commissioners conference in Montreal, by a useful initial meeting (organised by the Canadian Commissioners) bringing together those involved in the APEC process with representatives of the European Union (EU) and OECD – the first major exposure of the APEC initiative to the Europeans.

They predictably expressed the same doubts and reservations about the APEC work as NGOs. Suspicions had just been re-inforced by Google's reported enthusiasm for the APEC Framework as a global privacy standard. Proponents of the APEC initiative went into damage control, having to give re-assurances about it not being intended to undermine existing higher standards; the 'harm' principle not meaning only economic loss, importance of civil society input etc.

There was in-principle agreement to involve the EU more in the APEC work e.g. possible observer status and an annual liaison meeting.

I welcomed the EU raising the same questions as NGOs and re-iterated our call for better civil society input. Other NGOs – particularly those from Canada and the US, who met separately in Montreal, are not yet convinced that engaging formally with the APEC process is desirable – seeing it as a potential trap we should perhaps avoid – discussions continue.