

## **Report on APEC Privacy developments, September 2010**

### ***Critical elements of the Cross Border Privacy Rules system yet to be resolved – some APEC economies progress privacy regulation in the meantime***

*This update on progress with implementation of the APEC Privacy Framework follows meetings in Sendai, Japan in mid September.*

*Report by Nigel Waters, who attended the APEC meetings in Sendai as an invited guest, with a watching brief on behalf of Privacy International (PI) and support from PI's Privacy in Asia project.*

The meetings followed the now familiar sequence of an informal open capacity-building seminar, (supported by APEC and USAid), an informal working meeting on the Cross Border Privacy Rules Pathfinder Projects, and then the formal APEC Data Privacy Subgroup meeting, recommendations from which were subsequently endorsed by the 'parent' Electronic Commerce Steering Group (ECSG).

There has been limited progress on the Pathfinder Projects, designed to set up a system of Cross Border Privacy Rules (CBPR), which has been the main focus of the Data Privacy Subgroup's work programme since 2007. The self-certification questionnaire for organisations seeking to join the CBPR system (Project 1) and the recognition criteria for Accountability Agents (AAs) (Project 2), were finalised and endorsed – the AA recognition criteria having been revised to now apply to both private and public sector accountability agents, and to recognise that the required dispute resolution mechanism may be provided by a specialised third party under a contract or agreement. The compliance review guidelines for Accountability Agents to use in assessing applications from organisations (Project 3) were subject to detailed editing, but several member economies want to further consider the final draft and it will not be possible to formally endorse these Guidelines before the next round of meetings in Washington DC, USA, in early 2011.

Other administrative components have already been endorsed (Projects 5, 6 & 7) – the cross border enforcement cooperation arrangement (Project 6) has now commenced and is discussed separately below.

The major outstanding component of the CBPR system is agreement on overall governance and administrative infrastructure (Project 8). Difficult issues arising from other projects – particularly Project 2 – have been carried over into Project 8, which will now proceed out of session, based on a paper - *Policies, Rules and Guidelines* – discussed in Sendai, which identifies outstanding issues to be resolved. These include mechanisms for accrediting privacy enforcement authorities (PEAs) and accountability agents (AAs); the identity, status and role of the proposed Joint Oversight Panel governance body, and funding – i.e. revenue generation and sharing (likely to be a significant hurdle to be overcome). Associated with this is the requirement for a public website listing organisations certified as compliant under the CBPR system (Project 4) – work is continuing on a specification for this website which is expected to be hosted by the APEC Secretariat but will need to fit into the overall governance and funding arrangements, once agreed.

The [Cross Border Privacy Enforcement Cooperation Arrangement](#) (CPEA) was endorsed by APEC Ministers in November 2009 and commenced operation on 16 July 2010. It is not limited to the CBPR system and is available for any cooperation on any privacy complaints or investigations by participants. The first five signatories - participating privacy enforcement authorities (PE Authorities) - are the Australian, New Zealand, Canadian and Hong Kong Privacy Commissioners and the US Federal Trade Commission. The Australian, NZ and US regulators, supported by the APEC Secretariat, are initially jointly performing the role of CPEA Administrator, including assessing applications to join the CPEA from other PE Authorities. Because common criteria have been used and mutual recognition arrangements established, eligibility to join the CPEA automatically qualifies a PE Authority to join the Asia Pacific Privacy Authorities forum (APPA). The CPEA is also designed to be consistent with the emerging OECD Global Privacy Enforcement Network (GPEN). The public launch of the CPEA in July 2010, and the fact sheet about it now readily available on the [APEC website](#), mark a new level of transparency for the APEC privacy work. However, while the CPEA is a potentially valuable initiative, it will only be effective if it is actually used to resolve privacy complaints with a cross-border element, and it remains to be seen if the participating PE Authorities will put the necessary resources and commitment into making it work.

Whether the APEC CBPR system proves to be of any practical value will depend on the finalisation of the governance arrangements, which will be the focus of the Data Privacy Subgroup's work over the next year, including inter-sessional work by email and teleconference and the next two meetings to be held in the USA during 2011. The intention remains to have the CBPR system completed and operational by the end of 2011.

As well as the CBPR work, and establishment of the CPEA, the Data Privacy Subgroup also seeks to encourage domestic implementation of the APEC Privacy Framework in member economies. The Subgroup meeting and the technical assistance seminar in Sendai heard reports on developments in several members, including passage of a data protection law in Malaysia and Mexico since the February 2010 meetings; progress towards legislation in Thailand, the Philippines, Chile and Peru, and proposed amendments to existing privacy laws in Australia, Chinese Taipei, Hong Kong (China) South Korea and Canada. Other delegates reported associated developments with Trustmark schemes and/or relevant sectoral legislation, and, in the case of the USA, the FTC's work on Online privacy. The Individual Action Plans (IAPs), which members are committed under the APEC Privacy Framework to lodge and update, remain in most cases significantly out of date, although Malaysia tabled an updated IAP following the commencement of its 2010 law and this should appear on the [IAP page of the website](#) soon. The technical assistance seminar featured detailed reports on the regulatory environment and prospects in Thailand and Chile, and reviews of the situations in Vietnam, The Philippines and Indonesia – reports on which had featured in the February seminar in Hiroshima. Papers from the seminar should also be available via the APEC website

The Subgroup also heard reports on related international developments in the OECD, APPA and on the Accountability project's 2010 'Paris' phase and ambitions for 2011, which overlaps with the work of the EU's Article 29 Working Party summarised in its Opinion 3/2010 on the principle of Accountability.