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Conference

Where the world
talks security

Moving Data Around Asia-Pacific

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Who We Are



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Overview of Privacy Regimes

Hong Kong, India, Japan, Singapore (plus
South Korea and China)

Hong Kong

- Personal Data (Privacy) Ordinance, amended 2012
 - Broad definition of personal data
 - “Data User” bears responsibility, even if processor loses the data
 - Non-compliance leads first to enforcement action, then prosecution
 - Maximum penalty is HK \$50,000 or 2 years in jail
 - Motivated regulator: Privacy Commissioner for Personal Data
Stephen Wong

Hong Kong

- Six basic principles
 - Collection: Notice should be given of collection and who else will use
 - Accuracy and retention: Have an obligation to allow correction and data should be destroyed when no longer useful
 - Use: should only be for purpose specified
 - Security: Collector is responsible for loss or erasure
 - Openness: Privacy notice should be clear and accessible
 - Access and Correction: Consumers have a right to know what you know about them

India

- “Sensitive Personal Data or Information” (SPDI)
 - Passwords
 - Financial information
 - Health information
 - Sexual orientation

India

- General requirements
 - Reasonable security of the SPDI you hold
 - Consent for collection, use only for stated purpose
 - Right to review, amend, and retract
 - Transfer only to countries with equivalent privacy law
 - Disclosure of transfer to third party
- HOWEVER: It's unclear who the regulator is in many instances. Much of the oversight is done through the courts.

Japan

- Personal Information Protection Act
 - Covers any organization that collects Japanese citizen data
 - Comes into force May 30, 2017
 - Broad definition of personal data
 - Transfer only to “adequate” countries, under specific circumstances (we’ll get to that), or with express consent
 - Brand-new regulator: No track record yet

Singapore

- Personal Data Protection Act
 - Regulated by the Personal Data Protection Commission
 - Came into effect July, 2014
 - Broad definition: “Whether true or not”
- Basic principles:
 - Consent: Use or disclosure with the consumer’s knowledge
 - Purpose: Use it for what you said you’d use it for
 - Reasonableness: “Surprise minimization”

China and South Korea

- China: Privacy via cybersecurity
 - Cybersecurity Law in effect June 1, but still lots of confusion
 - All personal data kept in China, unless government security review
 - Find a lawyer who knows what they're doing here
- South Korea
 - Act on the Promotion of Information Communication Network Utilization and Information Protection
 - Strictest privacy law in the world?
 - Fines of up to 3X impact on consumers
 - Find a lawyer who knows what they're doing here

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APEC's CBPRs

A universal way to transfer data
throughout APAC?

What Are the CBPRs?

- APEC Cross Border Privacy Rules (CBPR) system
 - Voluntary but enforceable framework of data privacy principles that companies commit to apply to data received under the system
 - Developed through a multi-stakeholder process over six years
 - APEC Leaders committed to CBPR implementation in 2011 and re-affirmed commitment in 2016
 - Companies must self-certify to an accountability agent, an approved independent third party verifier

What Are the Benefits of CBPRS?

For Businesses

- Facilitates legal compliance
- Enables cross-border transfers
- Demonstrates accountability
- Builds consumer trust

For Consumers

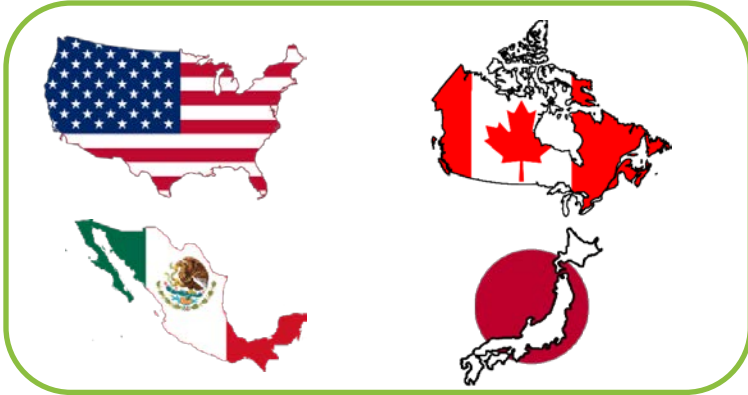
- Enhances privacy protections and improve trust
- Streamlines complaint process

For Government

- Facilitates Trade and Establishes Credibility in Privacy
- Coordinates Enforcement
- Streamlines Investigations

Who Participates?

Economies



Accountability Agents (AAs)



Companies

IBM HP IntaSect Communications
Merck Apple Cisco

What's happening now: Hong Kong

- Active participant in the development of the CBPR system
- Member of the Cross Border Privacy Enforcement Arrangement (CPEA)
- Developing local certification (P-Mark) that could be compatible with CBPRs
- May offer a basis for transfer upon implementation of the transfer limitation principle

What's happening now: India

- Data Security Council of India is interested in developing a certification system similar in scope to CBPRs
- India is not an APEC member economy
- May develop a comparable certification system that could be crossed recognized with CBPR-participating economies
- Enforceability not necessarily dependent on new law - existing state authority may suffice

What's happening now: Japan

- Has joined the CBPR system
- Has appointed an Accountability Agent (JIPDEC) and begun certifying companies
- Specifically calls out CBPRs as a basis for transfer (due diligence) under the new Japanese Privacy law that goes into effect at the end of May

What's happening now: Singapore

- Announced intention to join the CBPR system at the most recent APEC meetings in Nha Trang, Vietnam (February)
- Developing a local certification system through PDPC - also likely to be compatible with CBPRs
- Ideally, CBPRs recognized in a similar manner to BCRs

What's happening now: South Korea

- Has submitted its application to join CBPRs
- Anticipates appointing KISA as its first Accountability Agent
- Likely to begin certifying companies later this summer or early fall

What's Next?

Expansion to
additional APEC
economies

Privacy
Recognition for
Processors (PRP)

APEC-EU
interoperability

Website
Enhancements

Additional Resources

- APEC Privacy Framework:
http://publications.apec.org/publication-detail.php?pub_id=390
- Information Integrity Solutions Report on CBPR Benefits:
http://unctad.org/meetings/fr/Contribution/dtl_eweek2016_IIS-APEC_en.pdf
- APEC Report on Readiness for CBPRs:
http://publications.apec.org/publication-detail.php?pub_id=1800
- Questions? Email andrew.flavin@trade.gov

Questions?



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