

## **Summary of Proceedings**

Richard Bourassa, Acting Chair of the Electronic Commerce Steering Group opened the workshop, welcomed delegates and introduced Mr Guillermo Thornberry, Chairman of the Board of the Peruvian Telecommunications Regulatory Agency, OSIPTEL.

Mr Thornberry welcomed the delegates. In his remarks he noted that the large capacity of computing brings about widespread reorganization that raises policy issues that must be considered. He expressed the hope that meeting would identify the best policy options for economies. He noted that there are several variables at play - the differences in economic development, capacity, education and health care among APEC economies - but that there is much to be learned by identifying work in other economies that can be useful for our own economies.

He observed that the meeting is not an end in itself, but an instrument to transform and improve the lives of people, and that the areas for policy decisions included not only economic growth but social issues. Mr Thornberry stressed the importance of continued development of the communications infrastructure, and the need to balance attention to social concerns with efforts to attract investment, as both are critical to serving consumers and the needs of those who do not now have access to technologies.

Richard Bourassa talked about the history of the APEC Privacy Framework development, noting that the Principles, inspired by the Organization for Economic Cooperation and Development (OECD) Guidelines and national legislation, were agreed upon in 2004. In 2005 the Data Privacy Subgroup began work on implementation of the principles, holding workshops to allow an open exchange of views between a wide range of stakeholders and economies. At those meetings delegates discussed the need to position privacy in an APEC context, and to examine how to maximize benefits of good privacy protection for consumers, government and business.

He reviewed the workshop's proceedings and topics for discussion, and pointed to the Pathfinder as a mechanism for harvesting what is learned from the workshop.

## **Session I: Asian Culture of Privacy**

Session I, chaired by Yoshio Araki of IBM, Japan included remarks by Mr Duong Hoang Minh, Viet Nam E-Commerce and Information Technology Agency, and Dr Hiroshi Miyashita, Chief, Cabinet Office, Government of Japan.

Mr Araki opened the panel by noting that Asian delegates had voiced the need for an opportunity to explain to the APEC participants the differences between the concept of privacy in Asian economies from the way the subject is viewed in the Americas and Australia, and that this panel was intended to respond to that concern.

Mr Minh of Viet Nam spoke first, noting that concepts of personal information protection and data privacy are still new in Viet Nam and that knowledge and understanding of the issues in the general public and businesses are limited. He highlighted the legal framework on data privacy as found in Viet Nam's Civil and Criminal Code, as well as in its recently enacted Law on E-Transactions and Law on Information Technology.

Dr Minh discussed the low number of websites that post privacy policies, and the growing awareness of the Vietnamese people about privacy and personal data protection, particularly as a concern that personal data might be compromised when engaging in e-commerce. Finally he talked about approaches to enhancing personal data protection in Viet Nam, citing education of the public and businesses on issues of privacy and data protection and continuing development of domestic approaches to privacy legislation, including perfecting the legal framework on data privacy and developing the National Trustmark Organization to attain international recognition.

Dr Miyashita highlighted the way in which the concept of privacy has changed significantly in Japan. He discussed the communitarian nature of Japanese society, noting that when Japan was primarily a rural economy privacy connoted selfishness and an unwillingness to participate for the benefit of the group. As the culture has developed into a more urban one, Japanese citizens have expressed greater concern about privacy, as illustrated in public opinion polls that identify the wide ranging areas of personal information one does not wish to disclose.

Mr Miyashita discussed the Japanese Act on Protection of Personal Information and the manner in which it encourages protection of personal information by business. He noted the advance in information privacy protection in Japan, as illustrated by a decrease in data breaches and increased adoption of the JIPDEC Privacy Mark and the PD Mark.

## **Session II: The Latin American Culture of Privacy**

Erick Iriarte, Alfa-REDI, Ivan Ferrando, Jorge Navarro, ALADI-Mexico and Lina Ornelas, Federal Institute of Access to Information (IFAI-Mexico) were participants in this panel, moderated by Luis Pacheco of OSIPTEL.

Erick Iriarte opened his remarks by observing that right now users are more interested in content than in privacy. He said that there are issues of privacy compromises due to access by government to information. He noted that many Latin American economies have already put regulations in place about privacy and that there is some similarity among the views of Latin American countries related to civil rights. The key now is to find a basic platform and points of harmonization across the region. Harmonization work is being done in the context of the eLAC25-eLAC78, and in the Ibero-American Data Protection Network. Work will continue toward the goal of a harmonized regulatory framework for the whole region by 2010, taking into account legislation, agreements, and treaties.

Mr Ferrando of Peru stated that personal data protection acts have been passed in economies such as Mexico, Argentina and Colombia. He discussed the Declaration of the XIII Ibero-American Summit that promotes directives aimed at uniform legal criteria for protection of personal information within the economic region and the need to evaluate the APEC Framework for this purpose. He noted that Peru's lack of a data protection law places it at a comparative disadvantage among economies, but that a draft bill is under consideration. His discussion highlighted the issues raised by the adoption of new technologies, and the interest of law enforcement in data flows and access to data for law enforcement purposes and its impact on data retention practices.

Mr Navarro discussed the Spanish and European roots of privacy and data protection in Latin America. He noted the similar social and political problems in the region, particularly those of developing economies and the need for transparency to promote democratic systems. He highlighted global consensus for privacy and data protection standards but said that there are concerns in Latin America about which model for protection should be adopted, pointing to the EU requirement for unambiguous consent as an important difference with the APEC approach. Mr Navarro reviewed in detail the extensive privacy and data protection regime in Mexico, and noted the advances in Chile and the work in this area in Peru.

He discussed extensively the need for regional harmonization, and reiterated the concern in the region about determining which approach would best strengthen economies, noting in particular the work of the Data Protection Ibero-American Network.

Finally he highlighted challenges going forward as promotion of self-regulatory regimes, capacity building, inclusive law-making processes and adequate inter-government agency strategies.

Ms Ornelas opened her remarks by observing that in Latin America the culture of privacy has not been created yet, that other concerns are more pressing, and that education is necessary. She noted that in Mexico there is no specific law on privacy or data protection but that there are regulations aimed to protect private life and personal data. These are found in Mexico's

Constitution, its civil code, banking and tax laws, and consumer protection laws. She also discussed the protections provided in the Federal Freedom of Information Act that protects personal data collected by government and guarantees treatment, including access and correction by individuals of information about them. She said that while the culture of privacy is not extensive, there is an opportunity to create conditions to protect privacy in all sectors, and that the commercial sector has taken a step forward to protect their clients through use of trust marks, codes of ethics, and privacy policies.

## **Group Discussion**

The group discussion made important points related to the difference between harmonization of laws within regions and establishment of a framework for cross-border transfers that allows for accountability and enforcement. The APEC principles have the potential to provide the minimum requirements for those transfers across the region no matter what decisions about harmonization are arrived at.

Discussion also focused on the utility of APEC principles as economies work toward adoption of domestic laws, by providing a framework for thinking about requirements and a regional reference point.

## **Session III: Obligations of Outsourcing Companies**

Mark MacCarthy of Visa; Marty Abrams of the Center for Information Policy Leadership; Phillipa Lawson of the Internet Policy and Public Interest Clinic of the University of Ottawa; and Katitza Rodriguez of EPIC spoke in Session III. Alejandro Moscol of OSIPTEL served as moderator.

Mark MacCarthy reviewed the Visa system, how it functions, who participates in the system and how information flows. He noted that financial information systems must have regulations to flourish. They cannot be free of government oversight but that oversight must be balanced.

His comments emphasized that with increases in data breaches, data security will become of increasing importance to companies seeking outsourcing services. If breaches continue and if data is not safe and secure, the systems will not grow as they should. He encouraged the adoption of data security rules that are process oriented, that impose a generalized obligation for security and that provide for notification of consumers so they can protect themselves from harm. Security, he said, is a cross border problem - not a only a local one - as data breaches affect people across borders and data thieves move to places where security is not as stringent.

Martin Abrams talked about privacy as a local concept, but remarked that data flows globally and that there is a universal obligation to meet the promises made with respect to the data. He noted that transferring of liability is a contentious issue in outsourcing, but that within the APEC framework the issue becomes accountability rather than liability.

He further highlighted that companies outsourcing services should look for vendors that understand how to put in place the appropriate security safeguards and limitations on information use, have the capacity to do so and the character to follow through. Economies must have a legal structure that assures that contractual obligations are honored, an ability to hold employees accountable for their actions and participation in global governance.

Phillipa Lawson and Katitza Rodriguez brought perspectives of civil society to the discussion. Both emphasized the concern of consumers about privacy, particularly in the context of outsourcing because of inherent vulnerabilities, potential access by local governments and the fact that data is more exposed because it is in more than one set of hands.

Ms Lawson talked about the role of robust data minimization and retention policies in enhancing data security and the importance of avoiding data transfers to jurisdictions that lack due process guarantees. She called for a stronger standard of consumer notification and consent when outsourcing is involved than that set out in the APEC principles to enable consumers to play a

role in managing risk. Ms Lawson also talked about breach notification as a means of helping consumers avoid harm. She encouraged adoption of strong privacy laws by all APEC economies, and development of cooperative cross-border enforcement and consumer redress mechanisms. Her remarks also discussed the importance of security through encryption, anonymization or pseudonimization, as well as technical security safeguards and business process and employee safeguards.

Ms Rodriguez noted that privacy is not simply a cultural value, but is set out in the declaration of human rights. She pointed to Canada's law as providing a good level of protection while promoting the APEC guidelines. She saw APEC as a baseline that can serve as a starting point and emphasized the importance of the APEC accountability principle as important to assuring higher privacy standards.

## **Session IV: Obligations and Requirements of Processing Service Providers**

Jennifer Stoddart, Privacy Commissioner of Canada, moderated this panel, which included Nigel Waters, of Privacy International; Joseph Alhadeff, speaking in his capacity at the US-India Business Council; and Scott Taylor of Hewlett-Packard

Commissioner Stoddart opened the session by posing several questions -- What is the role of data processors in supporting privacy standards?, How does the APEC framework make a difference in this task? How do we deal with issues of quality administration and enforcement of privacy rules in APEC and non-APEC economies?

Nigel Waters noted that civil society organizations welcome any developments that encourage companies to keep their privacy promises no matter where data is processed. He noted that Australian consumers are uncomfortable with outsourcing overseas, and sees the APEC principles as a floor, not a ceiling for protection.

He assumes that many economies will continue to have standards for protection that are higher than APEC standards. He talked about the need for assessments of adequate protections for data within jurisdiction and to focus on cross-border enforcement of complaint handling. He also suggested that the combined efforts of business and civil society to push for holding less responsible companies to high standards could be effective and benefit business.

Joseph Alhadeff talked about the experience of India in establishing a mechanism to assure privacy protections. He mentioned the importance of early efforts at capacity building and promoting a better understanding of the roles of industry and government. He said that it was important to examine existing local laws, work on filling gaps in legislation, and raise the level of participation of stakeholders. He cautioned against expecting perfect results too soon, and emphasized that creating a trusted environment for privacy and data processing is an iterative process.

Scott Taylor brought the perspective of a data processor to the conversation, stating that Hewlett Packard focuses on many factors before putting a service provider in place. It selects the service provider based on trustworthiness and competency to manage to the requirements that come with data. In determining the appropriateness of a particular economy, it considers geographic location, nature of the workforce, local laws, political stability, nature of the labor laws and infrastructure.

The presentation noted trends in outsourcing observing that data controllers increasingly raise privacy as an issue in outsourcing deals and that data controllers increasingly attempt to transfer responsibility to the processor. He also commented on the increasing complexity of the question of what constitutes personally identifiable information, the lack of understanding of the global landscape, and that data controllers increasingly look to processors for guidance.

He noted that data controllers are responsible for informing the data processor of the requirements that come with data and for retaining accountability for the data.

## **Closing**

David Loukidelis closed the day by drawing together key themes and observations.

## **Session V: APEC Principles and Fostering Economic Growth**

Session V included panelists Richard Bourassa, Acting Chair ECSG and Director, International Policy E-commerce Branch, Industry Canada; Peter Cullen, Chief Privacy Strategist, Microsoft; and Harry Chang, Chief of Promotion, PROINVERSION. Julio Cesar Vega, Secretary of Economy's Office, Mexico, served as moderator.

Richard Bourassa outlined a history of the work to develop the APEC Privacy Framework and principles. He pointed to accountability as the principle at the core of the discussion of cross border enforcement rules. He also noted that the nine APEC privacy principles apply both in a domestic environment and internationally.

He discussed the Pathfinder projects as a way of giving visibility to issues of data protection and as a work program to keep efforts focused and moving forward. He noted the importance of cross border cooperation - government-to-government, regulator-to-regulator, and trustmark-to-trustmark, as well as permutations of these. Setting the stage for cooperation is key, as is avoiding unnecessary administrative and bureaucratic burdens.

Mr Bourassa noted that adoption of APEC principles can foster expanded trade and investment for economies, and benefits for industry that include branding and public recognition for sound privacy practices, and a harmonized, interoperable, predictable approach to privacy protection. He envisioned strengthening cooperation in the Pathfinder projects as among next steps.

Peter Cullen suggested that the discussion may be focused too much on harmonization of principles. He observed a fairly high level of harmonization, but noted a gap of enforcement capability and stated that the focus belongs on repairing that gap to assure trust. He also highlighted the effect of the presence of a criminal element that does not respect boundaries and that makes consumers wary of ecommerce. Addressing this is critical to growth of ecommerce. He talked about the importance of shared accountability so that the way information is handled does not depend upon which economy it flows to. Information will move globally but only if it does so in a trusted manner.

He further emphasized the importance of implementation of the APEC principles as the ultimate goal, and that the principles can serve as a starting point for economies developing a legal structure for data protection.

Harry Chang reviewed the state of foreign investment in Peru, the development of the economy's outsourcing business and the potential of the sector to promote economic development and create new jobs. He talked about the commitment of public and private sector institutions in creating new business in this area. He discussed the range of benefits these efforts bring to the economy -- increase in investment, new jobs, development of the labor force, ongoing professional training, export of services, improved work conditions. He discussed Peru's development of its Personal Data Protection Law intended to articulate a legal framework to guarantee protection of personal data, create a reliable environment for fluid data transfer, and increase Peru's competitiveness in outsourcing. The proposed law was drafted to meet the criteria of the APEC Principles for privacy protection, security and cross-border enforcement.

## **Session VI: Using the Pathfinder Protects to Build Capacity in Emerging Economies**

Nakorn Serirak, Office of the Official Information Commission, Thailand, and Isabel Davara, Chair, Latin America Electronic Commerce Committee, Section of Science and technology, American Bar Association Mexico, spoke on this panel chaired by Malcolm Crompton, Information Integrity Solutions, Australia.

Malcolm Crompton opened the session by reviewing the nine Pathfinder projects and their goals.

Dr Serirak surveyed the key laws governing data practices in Thailand, both as related to government and protection of personal data. He introduced the workshop participants to Thailand's Official Information Act of 1997, which guarantees the people's right to have full access to information. The goals of the act are to establish accountable and transparent government and to establish guidance about state agencies collection, processing, and use of citizens personal information, and the obligation to provide appropriate security for data. He also discussed Thailand's draft Personal Data Protection Act, which enforces rules about data processing of processors whether they are individuals, organizations or state agencies with business or commercial objectives.

Dr Serirak then spoke at some length about Thailand's plans to increase awareness of the business community, consumers about the APEC Framework. Thailand has developed an extensive project involving conferences, implementation surveys and articles, newspapers, journals and websites to increase public awareness.

Isabel Davara spoke about the APEC principles and the importance of the Pathfinder projects to reaching the goals of safety and trust for information flowing across the region. She highlighted accountability, enforcement and clear procedures to be of particular importance, and noted the need for balance and flexibility in implementation.

## **Session VII: Pathfinders Going Forward**

Session VII provided an opportunity for discussion of the Pathfinder projects. The speakers, Robin Layton, Department of Commerce; US, Heather Shaw, International Chamber of Commerce; US, Joseph Alhadeff, Vice President Global Public Policy and Chief Privacy Officer, Oracle, US; Danielle Chatelois, Manager, Privacy Policy, Electronic Commerce Branch, Industry Canada; Julio Cesar Vega, Ministry of Economics, Mexico; David Loukidelis, Information and Privacy Commissioner, British Columbia, Canada, were moderated by Colin Minihan, Chair of the Data Privacy Subgroup.

The discussion focused on the need to begin work on the pathfinders as a critical first step toward practical implementation. The panel talked about the importance of moving forward, warning against a fear that initial outcomes will not provide a perfect model for implementation. Rather, the goal of the pathfinders is to begin testing concepts, mechanisms and tools, and to engage emerging economies less familiar with APEC in the process, with a goal of a non-bureaucratic, lightweight system. One panelist commented that the more streamlined and uncomplicated the compliance mechanism, the more law enforcement and regulators are freed to pursue bad actors.

Panelists emphasized that as work begins, it will be important to increase the number and diversity of companies and consumer groups participating.

It was specifically noted that if the Pathfinder project and the APEC privacy principles were to be successful, they must work for all parties and all economies.

A considerable amount of discussion focused on the role that the Pathfinder projects could play in the important effort to educate consumers, business and policymakers about APEC. It was suggested that a series of documents, including a set of answers to frequently asked questions, be developed to hone definitions and clearly articulate complex concepts with which those new to

the APEC framework may be unfamiliar. This work could also further the effort to publicize APEC to the outside world and to APEC ministers. Audience questions about specific terms, particularly the meaning of “cross border privacy rules” highlighted the need for this work.

Other concepts that panelists thought important to explore are accountability and how it works, accountability agents, self assessment, and jurisdictional limits, the need for an enforcement mechanism that reaches across borders in the APEC region, the and the role of supporting local legislation.

It was emphasized that the APEC process was not an effort to lower privacy standards in any local economy, but to deal with issues that arise from cross border flows of data.

## ***Conclusions from the Workshop***

David Lemor, Executive Director of PROINVERSION - the Investment Promotion Agency of Peru - delivered closing remarks focused on the tremendous opportunity for economic growth, trade, investment, and ecommerce afforded by telecommunication and information technology for all APEC economies. He highlighted PROINVERSION's work to continue those trends and the successful efforts to develop a sector of call center work in Peru. He also emphasized efforts to coordinate passage of a law to provide appropriate treatment of data and regulations that fosters continued development in the sector. He noted the need for an international regulatory framework.

Guillermo Thornberry's remarks looked to the broader issues of societal changes that come with the growth of telecommunications an information technology. This transformation must be addressed in a responsible manner so as not to deepen disparities in our world of economic disparity.

He urged that while we must consider the moral, philosophical and human issues we can't put a brake on technology. He discussed the need to analyze and understand the data protection laws of economies, and strengthen institutions involved in monitoring and enforcement so that they can be independent and impartial, objectives and technologically efficient.

There is tremendous capacity for growth, but growth depends upon the ability of the economies to guarantee the security of information, and the capacity to develop infrastructure.

He posed three questions that must be answered:

- What kind of information society do we want?
- What are the characteristics and features of the transition to the information society?
- What policy measures should we take in the near future?

He then invited participants to return later this year to continue deliberations.