



Asia-Pacific
Economic Cooperation

2007/SOM3/ECSG/SEM/021

Agenda Item: VII

Pathfinders – Supporting a Business Case?

Purpose: Information
Submitted by: Veda Advantage



**2nd Technical Assistance Seminar on the
International Implementation of the
APEC Privacy Framework
Cairns, Australia
25-26 June 2007**

Pathfinder Projects – making the business case

Erica Hughes
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26 June, 2007

□ | 1. Pathfinders business case for CBPRs



CBPRs are a non-legal solution to a legal problem

Objectives for CBPR framework:

1. Promote better privacy protection and the free flow of information so that
2. A privacy promise travels with the data across borders and
3. New obligations are not acquired unnecessarily
(ie outside the primary commercial environment for the promise)

Businesses will support if:

- Deliver benefits above existing arrangements
- Match incentives to solving real problems

I want to address briefly the business case for implementing Cross Border Privacy Rules. If businesses are to support CBPRs, they must be able to deliver benefits that outweigh costs, and which outweigh the benefits of existing arrangements. Pathfinder projects have a special role to play in fleshing out the business case for CBPRs.

That will also mean that Pathfinder projects will have to look to some of the key drivers of costs and benefits for businesses. I'm not a lawyer, but I'm told by my legal advisers that CBPRs are a non-legal solution to a legal problem – a problem of conflict of laws. We could wait for treaty processes or custom to resolve the conflict. Or we could move forward with practical measures. Clearly many of us here see CBPRs as a practical means forward.

But just because we are pursuing a non-legal solution should not mean that we do not also have an eye to the bedrock of domestic laws that operate underneath CBPRs. It's a bedrock that our discussion yesterday scraped a couple of times, and its one I want to return to in my remarks today. Making the business case should mean that Pathfinder projects have an eye to domestic law.

Before I explain some of the reasons a business like Veda Advantage would look at CBPRs, I want to summarise in simple terms the purpose of pursuing CBPRs across APEC.

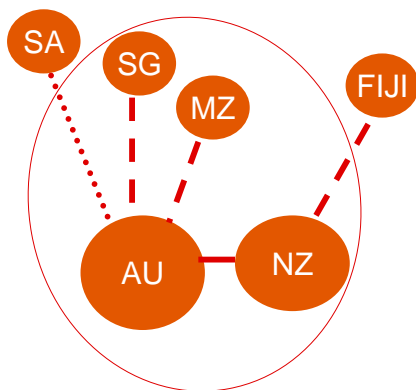
Put simply, we are seeking to promote both more effective consumer protection, and also free flows of information across borders. But not on any terms. As Malcolm Crompton put it at the first Seminar in January the aim is

- To have the promise that was made follow the data so that it can be kept the way it was made.

That will mean that a promise made to a consumer in one context (the primary context) is kept when the data goes to a new context. It should also mean that no new obligations are added unnecessarily to the promise. This last rider is an important part of the business case and a key to successful implementation.

And a key to success for the Pathfinder Projects will be to look at some of the implementation issues that affect the way promises are kept or altered.

Veda operates in economies with mixed regulation.



- Information products and business intelligence specialist
- Credit reporting, marketing and data analytics
- Primary operations in Australia and New Zealand, but also elsewhere in APEC and ASIA
- Scope for infrastructure/ hosting efficiencies
- Scope for transborder flows for data quality and analytics

Veda Advantage is a specialist information, business intelligence and credit reporting business. We are a regional business. We operate principally in Australia and New Zealand, but we also have business in other APEC economies (Singapore and Malaysia) as well as non APEC economies like Saudi Arabia and Fiji. While a significant part of our business is credit reporting, we have a rapidly growing business in marketing and data analytics, fraud and financial crime solutions for financial services.

We control and process very large amounts of personal information in these jurisdictions, and in some jurisdictions (Australia and New Zealand) this activity is very highly regulated. The majority of the personal information we hold is collected indirectly via third parties. We do not have regular contact with the majority of consumers on whom we hold data.

Given the size of the transactional data sets we operate, there is scope for infrastructure and data hosting rationalisation. As well, there is often value in transferring data across borders for data quality or analytics work, on our own behalf or that of our clients.

□ | 3. What challenges might we face?



There are real barriers to value creation from transborder flows

Examples

- Hosting/ infrastructure
- DQ
- Analytic studies

Outsource data from its primary use context

- Integrated credit, fraud or financial crime products

Integrate information products for integrated economies (AU-NZ)

Barriers

- Public confidence
- Cost & uncertainty
- Accretion of obligations

- Conflicting, duplicate or expensive obligations

There are currently good business reasons why we would seek to transfer data across borders – but there are currently real barriers to such transfers. Our interest is in seeing whether Pathfinder Projects can help us identify and reduce these barriers, while at the same time not eroding benefits.


For example, we might seek to achieve efficiencies by co-hosting data off shore from its primary use context, achieving infrastructure efficiencies. But where we seek to do that with economies – like New Zealand and Australia – that have privacy laws, we face difficulties in reconciling the obligations of the two bodies of law. Additional obligations are accreted to the data if it is held elsewhere, even if the primary use context remains the same.

If we sought to outsource data beyond these economies to one that did not have a privacy law, we would face a twin barrier: public confidence, as well as the cost of establishing appropriate contractual arrangements. These problems would be similar for many businesses operating within APEC. Australia and New Zealand, like many other

economies, have well developed union and consumer advocate campaigns highlighting concerns about ‘offshoring’ of data.

We have a third major potential driver for transborder data flows. Veda shares with many other Australian and New Zealand financial services businesses another challenge. We operate in two economies that are highly integrated, with very flows of people, business and risk between the two economies. It would make a lot of sense to develop integrated financial information products to match the integration of the two economies, especially in financial services. Yet while people, their business and their risk may move frequently between the two countries, their data does not. Again, the main barrier is differing obligations in the two economies.

So for Veda, as for other regional and global businesses, there are real barriers to transborder data flows.

□ | 4. Potential benefits and costs


The costs of undergoing a CBPR process must be outweighed by benefits, and these must not be eroded by aspects of implementation.

BENEFITS	COSTS	BENEFITS EROSION
Single process for compliance	CBPR development and review	Unnecessary obligation accretion; poor mutual recognition - Complaints handling
More easily identify trusted partners	No additional	Failure of trust framework – ineffective sanctions
Higher value products from integration across borders	Substantial development costs	Unnecessary obligation accretion & lack of mutual recognition

We are looking to Pathfinder Projects and CBPRs generally to see whether they can help reduce these barriers for us. But there is a simple equation we must make if the business case is to stack up:

- The benefits of undergoing a CBPR process must outweigh the costs, and must not be eroded by the implementation across economies.

For example, when outsourcing data to another economy, a CBPR offers Veda a potential benefit of a single process that is effective across APEC. However, there are costs involved, and the benefits can be easily eroded where new costs are added. This could happen if a regulator in the second economy could not give effective mutual recognition to the CBPR. In turn that regulator may have to entertain a complaint against the company from the primary economy. This could add cost by double handling of the complaint. More importantly, there might be the addition of new obligations on the primary promise outside the primary use context.

We also see a potential benefit of increased public trust where the data is transferred from its primary economic context to a second economy with no privacy law. But this trust benefit could be eroded quickly if the complaints handling and sanctions were ineffective. This may occur with a very significant breach where the sanction of removal of the trustmark was insufficient to the gravity of the breach.

In both these cases, minor modifications to domestic law in the second economy would allow the designated entity to achieve effective mutual recognition.

In the third case, Veda sees a potential benefit in developing integrated products for integrated economies like Australia and New Zealand. But again, where domestic law does not allow effective mutual recognition, the benefit is eroded.

□ | 5. Can Pathfinders deliver the business case?



Pathfinders can help define the business case by paying attention to costs, delivery of benefits and benefits erosion in implementation.

- Pathfinder projects: specific business benefits, benefits erosion?
- A non-legal solution to a legal problem should NOT mean:
 - Ignoring differences in domestic law that may affect benefits realisation
 - Ignoring minor changes to regulator powers that could facilitate effective implementation
- Relevant projects 3,6,8,9
- Consider a “black list” as well as a “white list”
- Consider a specific Business Case Pathfinder – AU/NZ

Pathfinder Projects have a very important role in helping to define the business case for CBPRs. Veda sees a significant potential upside in CBPRs effectively implemented. But equally, costs could climb and benefits be eroded where implementation is incomplete – especially in the area of mutual recognition.

A critical question for the Pathfinders will be the effect of domestic law on CBPR mutual recognition processes. The fact that this is a largely non-legal solution to a legal problem should not prevent the Pathfinders from looking at these issues. In particular there may be minor changes to regulator powers that could assist in mutual recognition. For economies without privacy laws, attention to the powers of designated entities could also help ensure effective mutual recognition.

The task for Pathfinder Projects is to look carefully at identifying business benefits, and the implementation issues that might erode them.

In particular the following projects are very relevant:

- Project 3 - compliance review of an organisation’s CBPRs

- Project 6 – Template enforcement co-operation agreements
- Project 8 – Guidelines and procedures for responsive regulation in a CBPR system
- Project 9 – Pilot Study.

In addition, we may want to consider other Pathfinder projects. For example, we may want to consider a ‘black list’ as well as a ‘white list’. A black list might significantly strengthen the sanctions available in a CBPR Framework. As well, the Projects could include a specific effort to document a business case for a CBPR proposal. There may be particular value in such a Pathfinder for Australia and New Zealand. It might go a long way to building business confidence.

□ | 6. Making the business case



- Pathfinders have a crucial contribution to building business confidence
- Pathfinders should help make the business case
- Look for effective implementation in mutual recognition and enforcement
- Special attention for:
 - Regulators – mechanism for mutual recognition and complaints
 - Trust marks – effective dispute resolution and sanctions
- Identify where modifications to domestic law might be required

In summary, Pathfinder Projects have a crucial role to play in defining the business case for an effective implementation framework. The apparent benefits of CBPR can easily be eroded by poor implementation. This is especially the case where regulators are unable to give effective mutual recognition to CBPRs or to forgo complaints handling and enforcement. These may accrete unnecessary obligations to the original primary promise

made to a consumer. Where that occurs, the business case for CBPR implementation is likely to be substantially weakened.

For these reasons, we think it is important for Pathfinder Projects to give specific consideration to benefits, costs and benefits erosion in the CBPR framework, and to any minor modifications to domestic laws that might support mutual recognition.



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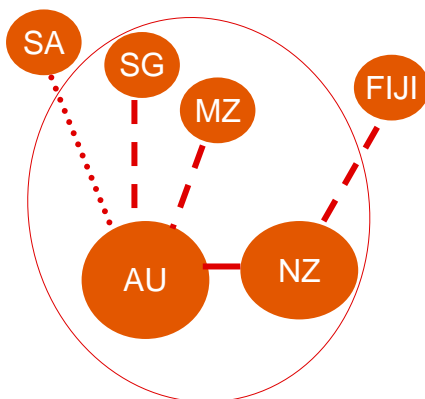
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COSTS

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No additional

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