

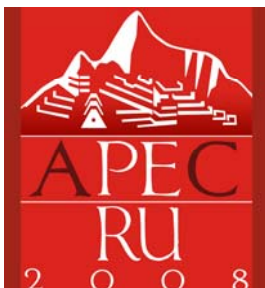


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Outsourcing and Accountability

Submitted by: Center for Information Policy Leadership



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Implementation of the APEC Privacy
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Outsourcing and Accountability

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Center For Information Policy Leadership & Hunton & Williams LLP

- Center is a think tank that develops balanced solutions to challenges presented to businesses in an information age
- Maintaining accountability in data flows between countries and regions is one of those challenges
- The outsourcing group at Hunton & Williams LLP represents many companies that outsource business processes

Outsourcing Transactions

- Very tough negotiations between outsourcer and vendor
- Define how risk is transferred
- Often we talk about this in terms of transfer of liability
- The actual issue is accountability

Liability and Accountability

- **Liability:** The state of being obligated according to law (or contract)
- **Accountability:** An obligation or willingness to accept responsibility or account for one's actions
- An organization may transfer liability – but never accountability

Basis in Law and Standards

- 1980 OECD Privacy Guidelines
 - Principle 8
- APEC Privacy Framework
 - Principle 9
- U.S. Safeguards rule
- Expansion to most US business via Section 5 FTC Act
- Canadian Federal Privacy Law

May 2004 Letter

FTC Chairman Muris to Congressman Ed Markey:

“...A company that is subject to U.S. laws is responsible for the use and maintenance of consumer information in accordance with those laws. Simply because a company chooses to outsource some of its data processing to a domestic or offshore service provider does not allow that company to escape liability for any failure to safeguard the information adequately.”

APEC Privacy Framework Principle 9

"A personal information controller should be accountable for complying with the measures that give effect to the Principles stated above. When personal information is to be transferred to another person or organization, whether domestically or internationally, the personal information controller should obtain the consent of the individual or exercise due diligence and take reasonable steps to ensure that the recipient person or organization will protect the information consistently with these Principles."

Attributes An Outsourcer Should Be Looking For

- Vendor
 - An understanding of how to program the appropriate security safeguards and limitations on information use
 - A capacity to do so
 - The character to follow-through
- Economy
 - A legal structure that facilitates contracts being honored
 - An ability to hold employees accountable for their actions
 - Participation in global governance

Cross Border Privacy Rules

- Specifically referenced in the APEC Privacy Framework
- A self assertion that a company should be free to transfer information based on its ability and willingness to be accountable
 - Agreement to carry forward local requirements and promises made in the notice
- The company would match its policies to the principles using a guidance document
- Outsourcer – CBPRs create confidence that accountability is in place
- Vendor – CBPRs create confidence in the capacity and character to follow through

Summary

- A company may transfer the processing and the data may be processed offshore
- But organizations will be held accountable if there is a security or privacy breach
- Therefore:
 - Companies should do what is necessary to assure one's service provider is capable of maintaining promised standards
 - To be competitive a vendor and an economy must demonstrate the understanding, capacity, and willingness to meet the APEC standards

I Can Be Reached

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