

Protecting Consumer Privacy in Cross-Border Data Flows through APEC Cross-Border Privacy Rules

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- Federal Trade Commission
Background

- Consumer Protection Authority

- Privacy Enforcement Authority

- Federal Trade Commission's International Privacy Agenda:

- Enforcement cooperation

- Policy development

- FTC's International Privacy Agenda – participation in international organizations:
 - Organization for Economic Cooperation and Development (OECD) – Working Party on Information Security and Privacy (WPISP)
 - Asia Pacific Economic Cooperation forum (APEC) – Electronic Commerce Steering Group (ECSG) and its Data Privacy Subgroup.

- APEC Privacy Framework of 2004
- APEC Privacy Pathfinder —
 - APEC Cross-Border Privacy Rules

- Relevance of APEC Cross-Border Privacy Rules to the work of GBDe
 - Parallels between GBDe initiatives on consumer dispute resolution and APEC cross-border privacy rules.
 - Possible roles for GBDe and its membership to support APEC CBPRs

- APEC Cross-border privacy rules –
 - A reciprocal privacy compliance program governing cross-border information transfers by companies in the APEC region
 - Similar to Binding Corporate Rules in Europe.

- Companies that wish to participate in the APEC cross-border privacy rules system will become certified as having privacy and data security practices that comply with the APEC Privacy Framework.
- APEC certification may be provided by so-called Accountability Agents, which could include trustmarks or government authorities, depending on the APEC economy.

Certification Process Example



Fills out intake questionnaire and submits it to TRUSTe



Assesses submission and certifies it as compliant



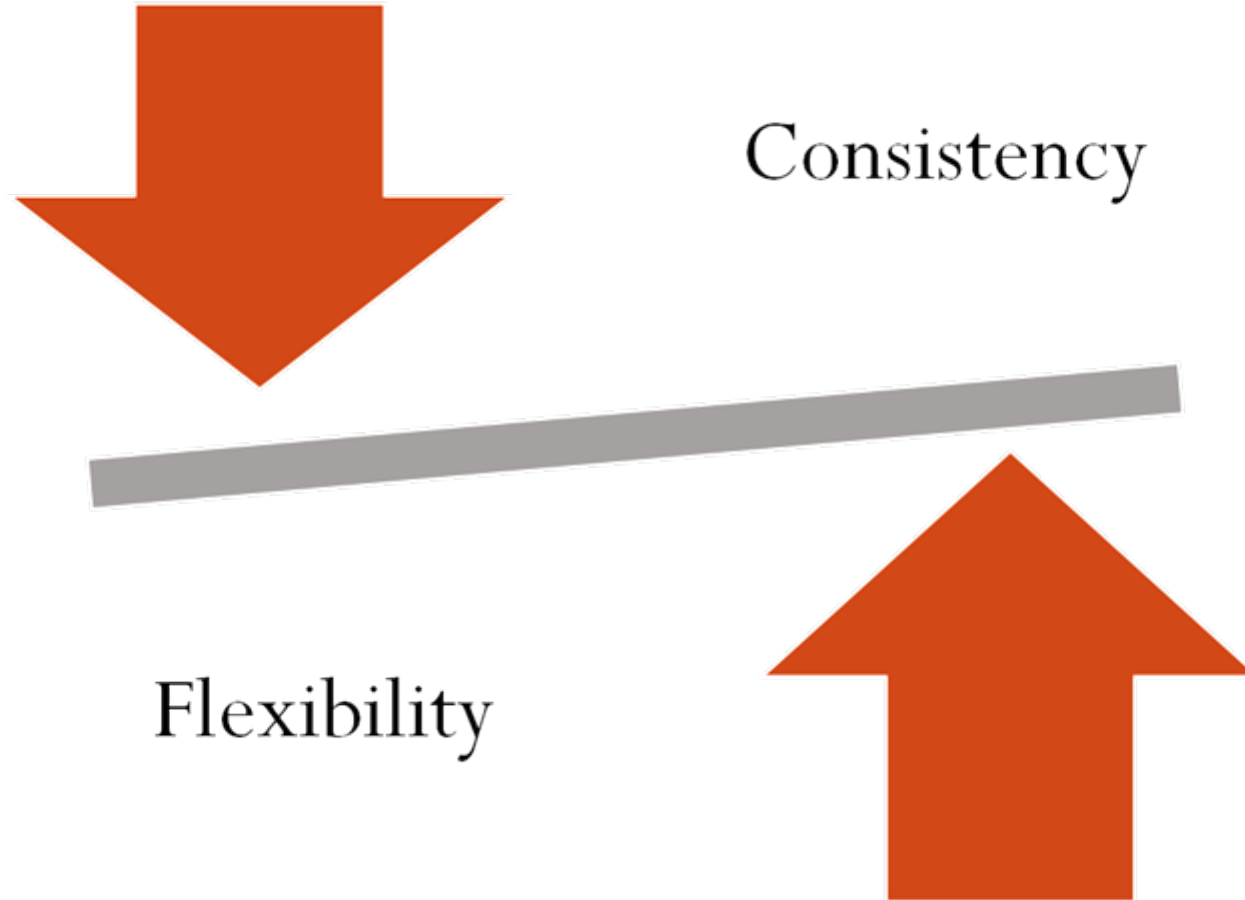
Receives notification of certification

- Once certified as being “APEC compliant” or as having APEC compliant corporate privacy rules and practices, companies are bound to adhere to their approved rules and stated practices with respect to any covered information transfers between participating APEC economies.

- Issues of dispute resolution, compliance, and enforcement of the program will, in the first instance, be handled by the Accountability Agents. Privacy enforcement authorities in the Participating Economies, such as the FTC and the different Privacy Commissioners offices in the APEC economies, will provide backstop enforcement to the system.

- To facilitate cross-border enforcement cooperation between the backstop privacy enforcement authorities, the authorities have developed an enforcement cooperation “arrangement”

Striking a Balance



Consistency

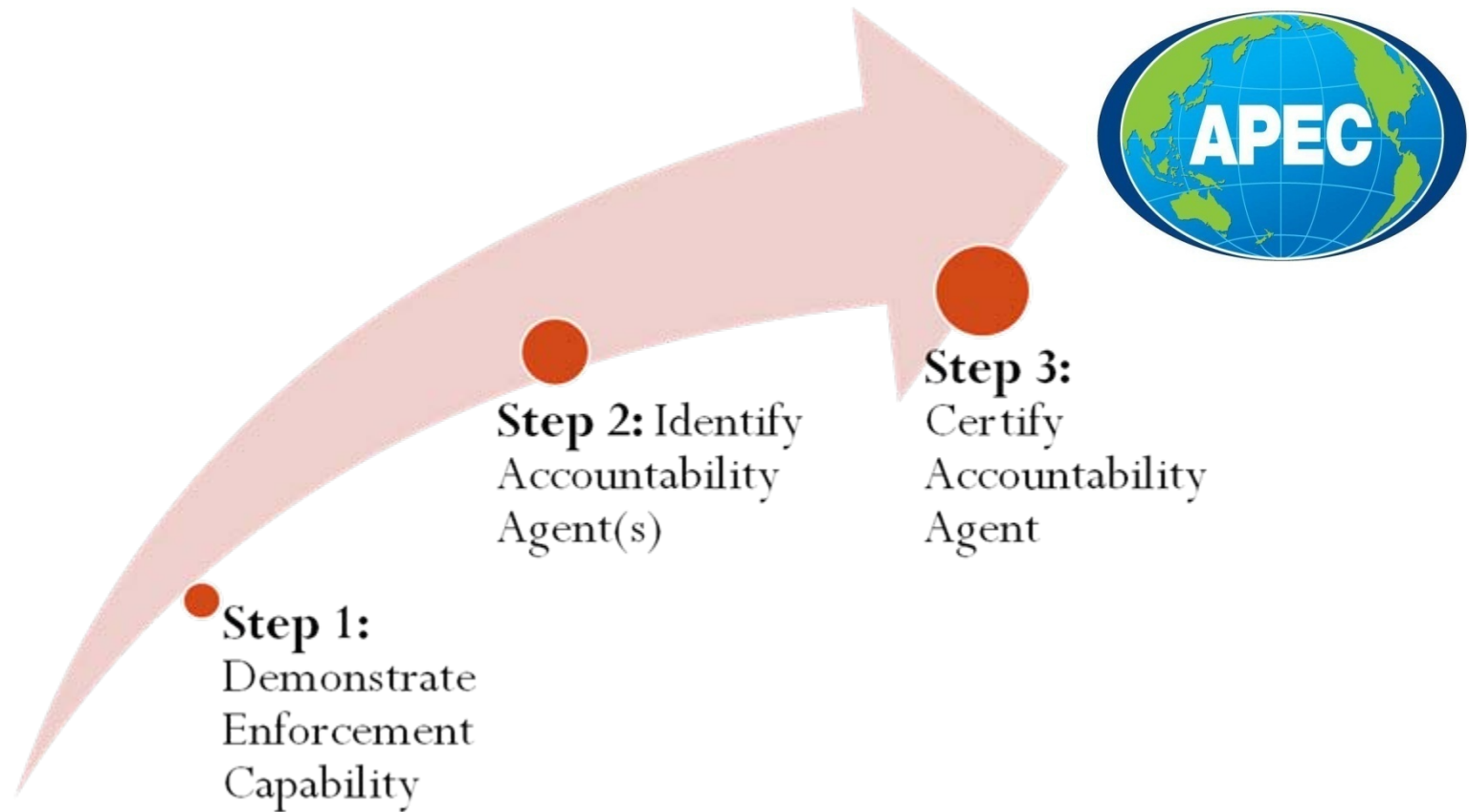
- APEC Cross-Border Privacy Rules will track the APEC privacy principles of the APEC Privacy Framework:
 - 1) Notice
 - 2) Use
 - 3) Collection Limitation
 - 4) Choice
 - 5) Security Safeguards
 - 6) Integrity
 - 7) Access and Correction
 - 8) Accountability



Flexibility

- **How to demonstrate APEC compliance:** use the APEC Pathfinder self-assessment documentation *OR* demonstrate how existing documentation from other privacy seals corresponds
- **Who handles compliance review:** An economy may choose from a variety of Accountability Agents -- may be government *OR* private sector
- **Enforcement:** An economy may use any law(s) that have the effect of protecting personal information consistent with the APEC Privacy Framework

What must an APEC Economy Do to Participate in the APEC Process: 3 Steps



- Where we are in the process of developing the APEC Cross-border Privacy Rules system:
 - We are near completion of developing the self-assessment documentation for companies
 - We have a proposed enforcement cooperation arrangement that can be signed by participating privacy enforcement authorities once it is endorsed by APEC Leaders.

- What needs to get done to complete the process:
 - Develop the specific program requirements and review criteria and process to be used by Accountability Agents.
 - Develop the overall governance structure of the system
 - Develop the governance and accreditation framework for participating private sector Accountability Agents

Thank You

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The statements in this presentation are my own and do not necessarily reflect the views of the Federal Trade Commission or of any individual Commissioner.