

CROSS-BORDER PRIVACY RULES SYSTEM JOINT OVERSIGHT PANEL

2018 RECOMMENDATION REPORT ON THE
CONTINUED APEC RECOGNITION OF TRUSTe

Submitted To:
Chair, APEC Electronic Commerce Steering Group

09 August 2018

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EXECUTIVE SUMMARY

On June 25, 2013, the United States Accountability Agent, TRUSTe, became the first officially recognized Accountability Agent in the Asia-Pacific Economic Cooperation (APEC) Cross Border Privacy Rules (herein ‘CBPR’) System. Pursuant to Paragraph 20 of the *Protocols of the Joint Oversight Panel* (herein ‘*JOP Protocols*’), APEC Member Economies had been given the opportunity to take into account the Joint Oversight Panel (herein ‘JOP’) Recommendation Report and Addendum to the Recommendation Report and the Member Economies ultimately granted TRUSTe’s request for recognition.

Pursuant to Paragraph 36 of the *APEC Cross Border Privacy Rules System Policies, Rules and Guidelines* (herein ‘*Policies, Rules and Guidelines*’), the first APEC recognition is limited to one year from the date of recognition and for two years thereafter, one month prior to which, an Accountability Agent should re-apply for APEC recognition, following the same process as the original request for recognition. Paragraph 36 also stipulates that during this time the Accountability Agent’s recognition will continue. On May 17, 2016, TRUSTe was re-recognized to serve as an Accountability Agent until 29 March, 2018 based on the amended *Policies, Rules and Guidelines*.

On March 23, 2018 the Office of Digital Services Industries received an early application from TRUSTe for the renewal of its APEC recognition, and a request that the early renewal be processed to harmonize re-certification timelines for TRUSTe’s CBPR and Privacy Recognition for Processors Accountability Agent recognitions. After having reviewed the completeness of this application, the United States Department of Commerce forwarded this submission to the JOP on July 13, 2018.

SCOPE OF CONSULTATION PROCESS

Pursuant to the *JOP Protocols* and the *Policies, Rules and Guidelines*, members of the JOP¹ began a consultative process to:

- Confirm that TRUSTe continues to meet the recognition criteria as identified in the *Accountability Agent Recognition Criteria (Annex A of the Accountability Agent APEC Recognition Application)* using the *Accountability Agent Recognition Criteria Checklist (Annex B of the Accountability Agent APEC Recognition Application)*;
- Confirm TRUSTe continues to make use of program requirements that meet the baseline established in the CBPR system; and
- Confirm TRUSTe has provided the necessary signature and contact information; and
- Consider claims made by others regarding TRUSTe’s recognition.

¹ For purposes of this consultative process JOP membership consists of: Michael Rose, Department of Commerce, United States of America; Kun Young Ahn, Korea Communications Commission, Republic of Korea; and Shinji Kakuno, Ministry of Economy, Trade and Industry, Japan.

The following Recommendation Report was drafted by the JOP pursuant to paragraph 24 of the *JOP Protocols* and complies with the requirements set out in paragraph 16 of the *JOP Protocols*. The JOP's consultative process included, but was not limited to, consultations directly with TRUSTe, consultations with TRUSTe's APEC Privacy seal clients, consideration of third party claims regarding TRUSTe's practices, consideration of responses from TRUSTe, consideration of Federal Trade Commission staff views on the third party claims, and a review of TRUSTe's APEC Privacy program requirements and the claims TRUSTe makes on its website.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified the United States is a participant in the APEC Cross Border Privacy Rules System and has demonstrated the enforceability of the CBPR program requirements pursuant to the information provided in Annex B of the United States Notice of Intent to Participate;

Having verified TRUSTe is located in the United States and is subject to the enforcement authority described in Annex A of the United States Notice of Intent to Participate;

Having verified with the Administrators of the APEC Cross Border Privacy Enforcement Arrangement (CPEA) that the United States Federal Trade Commission, a Privacy Enforcement Authority in the United States, is a participant in the APEC CPEA;

Having determined, in the opinion of the members of the Joint Oversight Panel, that TRUSTe has policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the CBPR system;

Having verified TRUSTe has provided the required signature and contact information, and;

Having considered the claims provided by others regarding the conduct of TRUSTe and, after discussing these matters with TRUSTe, relevant government authorities, including United States Federal Trade Commission staff, and finding them to either be without merit or sufficiently addressed by TRUSTe;

The JOP recommends APEC Member Economies consider the conditions established in the Charter of the Joint Oversight Panel to remain met by TRUSTe; the conditions for re-attestation established the Protocols of the Joint Oversight Panel to have been met; and to grant TRUSTe's request for continued APEC recognition to certify organizations within the United States and under the jurisdiction of the United States Federal Trade Commission as compliant with the CBPR system pursuant to the established guidelines governing the operation of the CBPR system.

Submitted by the Joint Oversight Panel

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REQUEST FOR CONSENSUS DETERMINATION

APEC Member Economies are asked to make a determination as to TRUSTe's request for renewal of its recognition, taking into account the JOP's recommendation. Any APEC Member Economy has the right to reject the request of an applicant Accountability Agent for recognition for failure to meet any of the recognition criteria required in the APEC Accountability Agent Recognition Application. When making this determination, any APEC Member Economy may request additional information or clarification from TRUSTe or the JOP. If no objection is received within the deadline for consensus determination as established by the ECSG Chair, the request will be considered to be approved by the ECSG. Should Member Economies determine that TRUSTe has met the necessary criteria, APEC recognition will be limited to two years from the date of recognition, which is the date of endorsement of this report, proposed to be 31 August 2018. TRUSTe may re-apply for APEC recognition if it so wishes at least one month prior to the date of recognition, following the same process described herein.

I. ENFORCEABILITY

Is the Applicant subject to the jurisdiction of the relevant enforcement authority in a CBPR participating Economy?

Recommendation

The JOP is satisfied that TRUSTe continues to be subject to the jurisdiction of the United States Federal Trade Commission (FTC), a participant in the Cross Border Privacy Enforcement Arrangement (CPEA).

Discussion

In its *Notice of Intent to Participate*², the United States described its enforcement authority as the United States Federal Trade Commission and the United States Patent and Trademark Office:

To become a recognized APEC Accountability Agent, an applicant must complete and sign the Accountability Agent APEC Recognition Application...By publicly posting its Recognition Application, a recognized APEC Accountability Agent further represents that the answers contained in the document are true.

In addition, any organization that publicly displays a seal, trustmark or other symbol indicating its participation in the CBPR System, or causes its name to appear on a list of recognized APEC Accountability Agents, is making an enforceable representation that it complies with the requirements applicable to a recognized APEC Accountability Agent.

If an APEC-recognized Accountability Agent subject to the jurisdiction of the Federal Trade Commission (FTC) fails to comply with any of these requirements, its representations of compliance may constitute unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC has broad authority to take action against unfair and deceptive acts and practices.

Furthermore, if an APEC-recognized Accountability Agent authorizes the use of its certification mark, 15 U.S.C. §1127, to convey compliance with the CBPR program requirements, under Section 14(5) of the Lanham Act, 15 U.S.C. § 1064(5), the U.S. Patent and Trademark Office may cancel the certification mark if the Accountability Agent (a) does not control, or is not able legitimately to exercise control over, the use of such mark, including by failing to monitor the activities of those who use the mark, (b) engages in the production or marketing of any goods or services to which the certification mark is applied, (c) permits the use of the certification mark for purposes other than to certify, or (d) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

² U.S. *Notice of Intent to Participate* available at cbprs.org

The JOP has confirmed that TRUSTe is subject to the regulatory oversight and enforcement authority of the United States Federal Trade Commission (herein ‘FTC’) since it is a Delaware-based for profit entity.³ The JOP has further confirmed that the FTC is a participant in the Cross Border Privacy Enforcement Arrangement (herein ‘CPEA’)⁴ and that the United States is a recognized participant in the APEC CBPR System.⁵ TRUSTe publicly indicates its participation in the CBPR System including allowing its name to appear on a list of recognized APEC Accountability Agents. TRUSTe agrees to continue to post all CBPR-certified companies online (to be made available at <http://www.truste.com/consumer-privacy/trusted-directory> and <http://www.truste.com/products-and-services/enterprise-privacy/apec-accountability>) as well as the applicable CBPR program requirements. The JOP has verified that TRUSTe has completed and signed the *Accountability Agent APEC Recognition Application*.

³ Registered as “TrustArc, Inc.”, file number 4564885, at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>, accessed on May 15, 2018

⁴ See <http://www.apec.org/Groups/Committee-on-Trade-and-Investment/Electronic-Commerce-Steering-Group/Cross-border-Privacy-Enforcement-Arrangement.aspx>

⁵ JOP Findings Report available at cbprs.org

II. RECOGNITION CRITERIA

The *Accountability Agent Application for Recognition*⁶ requires applicants to describe how each of the 15 Accountability Agent Recognition Criteria have been met using the Accountability Agent Recognition Criteria Checklist. Following is an update on each listed requirement and recommendation of the continuing sufficiency of each based on the information submitted to the JOP by TRUSTe.

Conflicts of Interest (Recognition Criteria 1-3)

Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent Application for APEC Recognition have been met and submit all applicable written policies and documentation.

Applicant Accountability Agent should submit an overview of the internal structural and procedural safeguards to address any of the potential or actual conflicts of interest identified in 2(b) of Annex A of the Accountability Agent Application for APEC Recognition.

Applicant Accountability Agent should describe the disclosure/withdrawal mechanisms to be used in the event of any actual conflict of interest identified.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criteria 1-3.

Discussion

Obligation to Impartially Administer Certification

Any entity maintaining a registered trademark in the United States is required by law to apply certification standards in an impartial manner. The JOP has confirmed that TRUSTe maintains a registered “APEC Privacy” trademark in the United States⁷ and is therefore required to apply its certification standards in an impartial manner. Title 15, Chapter 22, Subchapter I, § 1064 of the United States Code⁸ permits the Federal Trade Commission to request that the United States Patent and Trademark Office cancel this trademark on the grounds that the holder of the mark “discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.” (See U.S. Notice of Intent to Participate, Annex A, “[I]f an APEC-recognized Accountability Agent authorizes the use of its certification mark, 15 U.S.C. §1127, to convey compliance with the CBPR program requirements, under Section 14(5) of the Lanham Act, 15 U.S.C. § 1064(5), the U.S. Patent and Trademark Office may cancel the certification mark if the Accountability Agent (a) does not control, or is not able legitimately to exercise control over, the use of such mark, including by failing to monitor the activities of those who use the mark, (b) engages in the production or marketing of any goods or services to which the certification mark is

⁶ Available at cbprs.org

⁷ See <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4801:juxp93.2.1>

⁸ 15 USC 1064, available at <http://www.uspto.gov/trademarks/law/tmlaw.pdf>

applied, (c) permits the use of the certification mark for purposes other than to certify, or (d) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.”)

Obligation on Behalf of Employees and Officers to Avoid Conflicts of Interest

Under the California Labor Code⁹, all employees owe a duty of loyalty to their employer (see California Labor Code § 2863¹⁰, “[a]n employee who has any business to transact on his own account, similar to that entrusted to him by his employer, shall always give the preference to the business of the employer.) As such, no employee of TRUSTe can be employed by any other entity, whether or not that entity is a licensee of TRUSTe. This duty is incorporated into TRUSTe’s corporate policy prohibiting any actual conflicts of interest in the certification of TRUSTe Licensees and applies to all TRUSTe employees (see *Internal Conflicts of Interest Policy*, below). TRUSTe has confirmed that non-executive Directors do not have day-to-day operational responsibilities. In fact, corporate governance requirements in the United States significantly restrict a Director’s ability to influence day-to-day management of the corporation.

In addition, TRUSTe has provided the JOP their conflicts of interest policy for Board Members, and staff, outlining mechanisms to segregate business operations from the certification mechanism, satisfying the CBPR System’s conflict of interest requirements.

Internal Conflict of Interest Policy

TRUSTe provides technical, certification and consulting services to clients. TRUSTe has informed the JOP of their documented internal policies to avoid potential conflicts of interest between its consulting, technical service and certification activities.

Copies of the current versions of TRUSTe’s Conflict of Interest policies are attached as Appendix A to this report. Those clients that use any of TRUSTe’s consulting services must work with a member of the Consulting Department staff. CBPR certified clients or CBPR applicants that use any of TRUSTe’s technical services independent of the CBPR certification process will work with a member of the Technical Account Management staff.

TRUSTe has consented to notify the Joint Oversight Panel in the event that a CBPR-certified company makes use of (1) any consulting services or (2) technical services not related to their CBPR certification. TRUSTe will also notify the Joint Oversight Panel when a client that had previously made use of (1) any consulting services or (2) technical services not related to their CBPR certification becomes CBPR certified. In each instance TRUSTe will provide the Joint Oversight Panel with a copy of the relevant conflict of interest policy in demonstration of compliance with Accountability Agent Recognition

⁹ TRUSTe’s certification offices in the United States are located at 835 Market Street #800, San Francisco, CA 94103. All employees in this location are subject to California Labor Code.

¹⁰ Available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=02001-03000&file=2850-2866>

criteria.

TRUSTe's internal safeguards include documented internal policies to avoid potential conflicts of interest by members of the Board of Directors; and between its technical services, consulting, and certification activities. For details, please see TRUSTe's Director, Technical Account Management Team, and Consultation conflict of interest policies, attached as Appendix A to this report. These policies were either developed or revised to clarify TRUSTe's internal safeguards in addition to the baseline measures required under the Accountability Agent Recognition Criteria.¹¹ In addition, TRUSTe's Directors, certification team, technical services team and its consulting staff have been trained on these conflict of interest policies.

TRUSTe has indicated that some of the specific ways it has addressed potential conflicts of interest between consulting and certification activities are as follows:

- TRUSTe consulting services are primarily supervised and provided by a member of the Legal or Product department staff, as opposed to Global Privacy Solutions staff.
- In cases where pre-certification and/or certification are part of the Service Delivery engagement, Global Privacy Solutions staff will assist Legal and/or Product department staff in their review. However, in no case, will a Global Privacy Solutions staff work on both a consulting engagement and a certification engagement for the same client.
- Those Clients that use any of TRUSTe's Technical Services, independent of its APEC certification will work directly with TRUSTe's Technical Account Management team for any matters related to these services. Any APEC certified Clients which use any of TRUSTe's Technical Services independent of TRUSTe's APEC certification process will be reported to the APEC Cross Border Privacy Rules System's Joint Oversight Panel.

Program Requirements (Recognition Criterion 4)

Applicant Accountability Agent should indicate whether it intends to use the relevant template documentation developed by APEC or make use of Annex C of the Accountability Agent Application for APEC Recognition to map its existing intake procedures program requirements.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criterion 4.

Discussion

The JOP has confirmed that TRUSTe meets this requirement and has used Annex C to demonstrate compliance with the Assessment Criteria and intake documents approved by APEC. In addition, TRUSTe has made information on their CBPR certification

¹¹ See Section 4 for further discussion.

requirements available on its public website: <https://www.trustarc.com/products/apec-certification/> ; <https://download.trustarc.com/?f=LH7RIJRS-627>.

Certification Process (Recognition Criterion 5)

Applicant Accountability Agent should submit a description of how the requirements as identified in 5 (a) – (d) of Annex A of the Accountability Agent Application for APEC Recognition have been met.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criterion 5.

Discussion

The JOP has confirmed that TRUSTe has in place a comprehensive certification process to review a program applicant organization's policies and practices with respect to the program applicant participation in the CBPR system and to verify its compliance with the Accountability Agent's Program Requirements.

The JOP has also confirmed that TRUSTe has in place a combination of three different methodologies to conduct the privacy certification review: (1) a manual evaluation of the program applicant's practices, (2) the program applicant's own attestations provided during the interview and through responses to the APEC CBPR System Intake Questionnaire¹² and interviews, and (3) ongoing monitoring through TRUSTe's proprietary technology and tools. TRUSTe has indicated that it examines how the program applicant collects, uses and shares personal data; and that it also identifies the program applicant's third party, data-sharing relationships.

The five steps of TRUSTe certification which the JOP has concluded meet the requirements as identified in 5 (a)-(d) of Annex A of the Accountability Agent Application for APEC recognition, include the following:

1. *Analyze:* TRUSTe performs the initial assessment of compliance.¹³
2. *Advise:* TRUSTe provides a comprehensive report to the program applicant outlining its findings regarding compliance with TRUSTe's APEC Privacy Program Requirements.¹⁴
3. *Remedy:* TRUSTe verifies that the required changes provided in the comprehensive report have been properly implemented.
4. *Award:* TRUSTe has certified that the program applicant is in compliance with the APEC Privacy Program Requirements.

¹² APEC CBPR System Intake Questionnaire: <http://apec.org/Groups/Committee-on-Trade-and-Investment/~media/Files/Groups/ECSG/CBPR/CBPR-Intake-Questionnaire.ashx>

¹³ Appendix C is an example of TRUSTe's APEC Privacy program applicant interview form used during the Analyze portion of the certification process.

¹⁴ Appendix D is an example of TRUSTe's APEC Privacy findings report used during the Advise portion of the certification process.

5. *Monitor*: TRUSTe verifies ongoing compliance with Program Requirements.

On-going Monitoring and Compliance Review Processes (Recognition Criteria 6, 7)

Applicant Accountability Agent should submit a description of the written procedures to ensure the integrity of the certification process and to monitor the participant's compliance with the program requirements described in 5 (a)-(d) in the Accountability Agent Application for APEC Recognition.

Applicant Accountability Agent should describe the review process to be used in the event of a suspected breach of the program requirements described in 5(a)-(d) in the Accountability Agent Application for APEC Recognition.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criteria 6, 7.

Discussion

The JOP has confirmed that TRUSTe has in place written procedures which ensure the integrity of the certification process described above. In its application, TRUSTe described the four mechanisms it uses to ensure the integrity of the certification process and to monitor the Participant¹⁵'s compliance with the Program Requirements as described in 5(a)-(d) of the Accountability Agent Application for APEC recognition. Once a Participant completes the initial certification process as defined in requirements 5 (a)-(d) of the Accountability Agent Application for APEC recognition, TRUSTe uses a combination of approaches to ensure that compliance with TRUSTe's APEC Privacy Program Requirements is consistently and continually maintained. Unlike an audit – which only captures compliance at a single point in time – the JOP has confirmed that TRUSTe certification involves ongoing monitoring using a combination of inquiries/reviews and technological tools.

These tools include:

1. *Web crawling*: Proprietary TRUSTe technology performs website analysis for data collection and cookie identification.
2. *E-mail seeding*: A process by which compliance is monitored using unique e-mail addresses that do not reference TRUSTe, to check for e-mail sent by an unauthorized party, or after an unsubscribe request has been processed.
3. *Traffic analysis*: A device testing process primarily used to verify mobile device compliance with TRUSTe's certification standards.
4. *TRUSTe Feedback and Resolution System*: Defined in detail under Discussion section of Recognition Criteria 10, below. TRUSTe investigations may also be initiated after a TRUSTe scan, a media report, regulator inquiry or information obtained through other credible sources.

The JOP has confirmed that TRUSTe has in place a review process to investigate a

¹⁵ "Participant" means the entity that has entered into an agreement with TRUSTe to participate in the TRUSTe program(s) and agreed to comply with the program requirements included therein.

suspected breach of the program requirements described in 7 of Annex A of the Accountability Agent Application for APEC recognition. TRUSTe has indicated that it may initiate this investigation based on results of its technological monitoring, on information contained in a consumer complaint, news or press reports, regulator inquiry, or reports from other credible sources. This process assists in the verification of compliance or non-compliance with the program requirements.

Where non-compliance with any of the program requirements is found, TRUSTe will investigate the compliance issue, notify the Participant, outline the corrections necessary and provide a reasonable timeframe for the Participant to make such changes, during which time, TRUSTe will work with the Participant to ensure the necessary changes are made.

The JOP has confirmed that the three possible outcomes of a TRUSTe investigation are as follows:

1. An agreement between TRUSTe and the Participant over the privacy complaint resulting in Participant resolution that addresses the concern or request. TRUSTe provides a reasonable timeframe to complete the required changes based on the risk and level of non-compliance.
2. A disagreement triggering a notice of formal enforcement, resulting in the Participant's suspension or notice of intent to terminate for cause if the matter is not cured.
3. A failure to implement the required cure resulting in the Participant's termination from TRUSTe's program and publication and/or referral to the appropriate authority if Participant continues to hold itself out as CBPR-certified after termination.

Further, TRUSTe confirmed that, where the Participant is found to have displayed the TRUSTe seal on an out of scope online property, Participant shall promptly remove the seal from that property or face automatic suspension until the seal is removed. This commitment further satisfies the JOP to TRUSTe's requirements for certification and Participant notification of certification to consumers.

Re-Certification and Annual Attestation (Recognition Criterion 8)

Applicant Accountability Agent should describe their re-certification and review process as identified in 8 (a)-(d) in the Accountability Agent Application for APEC Recognition.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criterion 8.

Discussion

The JOP has confirmed that TRUSTe investigates, at least annually, whether its Participants are meeting and/or exceeding TRUSTe's APEC Privacy Program Requirements through a re-certification process. TRUSTe has indicated that if a

Participant notifies TRUSTe of a change or TRUSTe detects a change outside the annual re-certification cycle, the change will be verified by TRUSTe immediately, regardless of whether it is time for the Participant's annual re-certification or not.

Details of the re-certification process and annual attestation to answer questions Annex A of the Accountability Agent Application for APEC recognition 8 (a)-(d) are defined below.

1. *Analyze*: TRUSTe performs an assessment of compliance.
2. *Advise*: TRUSTe provides a comprehensive report to the Participant outlining its findings regarding compliance with APEC CBPR Program Requirements.
3. *Remedy*: TRUSTe verifies that the required changes outlined in the comprehensive report have been properly implemented.
4. *Notify*: TRUSTe notifies Participant that it is in compliance with the relevant APEC Privacy Program Requirements.

The JOP has confirmed that TRUSTe has conducted annual re-certification of CBPR-certified companies according to the re-certification process since APEC's 2013 recognition of TRUSTe as an Accountability Agent.

Dispute Resolution Process (Recognition Criteria 9, 10)

Applicant Accountability Agent should describe the mechanism to receive and investigate complaints and describe the mechanism for cooperation with other APEC recognized Accountability Agents that may be used when appropriate.

Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) of Annex A, whether supplied directly by itself or by a third party under contract (and identify the third party supplier of such services if applicable and how it meets the conflict of interest requirements identified in sections 1-3 of Annex A) as well as its process to submit the required information in Annexes D and E.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criteria 9, 10.

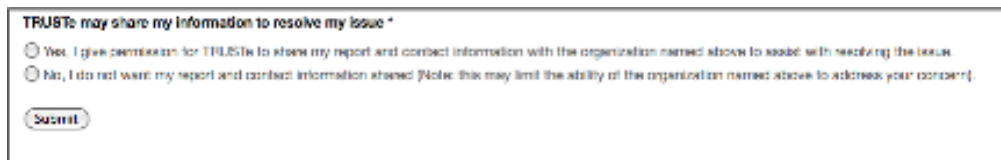
Discussion

The JOP has confirmed that TRUSTe has an existing in-house Feedback and Dispute Resolution System¹⁶ that meets this requirement. TRUSTe manages their dispute resolution process in-house and do not contract out this service to a third party. TRUSTe described dispute resolution process is a mechanism to receive and investigate privacy-related complaints about Participants and to resolve these disputes between complainants and Participants. TRUSTe notes that consumer dispute resolution is a key component of TRUSTe's privacy management solution suite, and helps monitor Participants' compliance with the relevant Privacy Program Requirements and hold Participants

¹⁶ TRUSTe's Feedback and Dispute Resolution System can be found at <http://www.truste.com/consumer-privacy/dispute-resolution/>

accountable. TRUSTe also notes that processing complaint disputes also provides TRUSTe with a window into the privacy issues that concern today's online consumers. This dispute resolution process is described in detail below.

1. *Receiving a Complaint:* The TRUSTe Feedback and Resolution System's process begins with a consumer complaint filed against a TRUSTe program Participant either with the company, or with TRUSTe. After TRUSTe receives a complaint, we initiate an investigation. A TRUSTe investigation may also be initiated after a TRUSTe review, a media report, regulator inquiry or information obtained through other credible sources. TRUSTe then reviews the complaint to determine if the complaint is relevant and falls under the scope of the Program Requirements. This can take up to 10 business days.
2. *Responding to and Investigating a Complaint:* The consumer (complainant) receives TRUSTe's initial response within 10 business days, TRUSTe's published time frame⁷. TRUSTe's system notifies the complainant of the response by the Participant, if any. Complainant and the Participant may correspond directly, with TRUSTe copied, such as in the event that the Participant asks the complainant for further information. Complainant and Participant are copied when TRUSTe sends its determination. The nature and duration of the investigation needed can vary widely. TRUSTe quickly checks all issues that can be immediately verified but ultimate resolution of the complaint depends on the nature of the issue.
3. *Resolving a Complaint:* After the complaint has been investigated, the Participant ordinarily has 10 business days to provide a written response for the complainant. For more urgent issues, such as security vulnerabilities, we escalate to the Participant via phone as well and generally expect responses much sooner, especially if we are able to verify the problem.
4. *Written Notice of Complaint Resolution:* Once the complaint is resolved, TRUSTe will send an email notice to both the complainant and, if participating, the Participant, notifying them of closure of the complaint.
5. *Process for Obtaining Consent:* TRUSTe's Feedback and Resolution form asks the complainant to provide consent before TRUSTe shares their personal information with the program Participant the complainant is filing a dispute about. All personal information collected during the request for assistance is collected in accordance with the TrustArc Privacy Notice (available at <https://www.trustarc.com/privacy-policy/>). Below is a screenshot from TRUSTe's Feedback and Resolution Form illustrating TRUSTe's online consent mechanism. Note, the complainant must indicate a preference (around whether they want their complaint shared) prior to submitting their complaint.



The screenshot shows a consent form with the following text and elements:

TRUSTe may share my information to resolve my issue *

Yes, I give permission for TRUSTe to share my report and contact information with the organization named above to assist with resolving the issue.

No, I do not want my report and contact information shared. (Note that may limit the ability of the organization named above to address your concern).

Submit

Screenshot 1 – Consent Mechanism

6. *Reporting Complaint Statistics and Release of Case Notes:* As of the date of

submission, 21 companies have received APEC CBPR certification. For a complete list please see Appendix E and online at www.cbprs.org. Please find complaint statistics and selected case notes for the CBPR system for the reporting period March 1, 2017 – February 28, 2018 in Appendix F.

Mechanism for Enforcing Program Requirements (Recognition Criteria 11-15)

Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.

Applicant Accountability Agent should describe the policies and procedures for notifying a participant of non-compliance with Applicant's program requirements and provide a description of the processes in place to ensure the participant remedy the non-compliance.

Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A.

Applicant Accountability Agent should describe its policies and procedures for referring matters to the appropriate public authority or enforcement agency for review and possible law enforcement action. [NOTE: immediate notification of violations may be appropriate in some instances].

Applicant Accountability Agent should describe its policies and procedures to respond to requests from enforcement entities in APEC Economies where possible.

Recommendation: The JOP is satisfied that TRUSTe meets Recognition Criteria 11-15.

Discussion

The JOP has confirmed that TRUSTe has a mechanism in place to enforce its program requirements, has established procedures to remedy non-compliance, impose penalties and notify public authorities, where appropriate. Following is an overview of these procedures as provided in TRUSTe's application for recognition and confirmed by the JOP:

Authority to Enforce Program Requirements: TRUSTe has the authority to enforce its program requirements (including its Governance Standards found in Appendix B) against Participants through its Master Services Agreement ("MSA"), or a substantially similar services agreement, which TRUSTe requires all clients to execute before TRUSTe begin the engagement (see Appendix G). This is reflected in TRUSTe's MSA, section 4.2.1: "If participating in a TRUSTe Assurance Program, Customer shall fully comply with the applicable Certification Standards, including, but not limited to any annual (or other) certification requirements contained in the application Certification Standards."

Process of Notifying Participant of Non-Compliance and Remedy: Once TRUSTe identifies that a Participant is out of compliance with the relevant program requirements,

either through TRUSTe's re-certification process, ongoing monitoring, or dispute resolution process, the Participant will be contacted immediately by the designated contact individual at TRUSTe. TRUSTe has indicated it will outline the corrections necessary to come back into compliance with its program requirements and provide a reasonable timeframe.

TRUSTe will continue to work with the Participant to come back into compliance.

If the Participant fails to come back into compliance with the relevant program requirements, TRUSTe will take steps, as outlined below, to either temporarily remove the seal from the Participant's website or terminate the Participant's participation in the program.

Remedy of Non-Compliance within a Specified Timeframe: The JOP has confirmed that TRUSTe has a process in place to place to suspend a participant if it does not remedy non-compliance within a specific time period. This process is described in TRUSTe's *Assurance Program Governance Standards* (see Appendix B) – Section K, Certification Status excerpted below:

K. Certification Status

- a) In the event TRUSTe determines that Participant's compliance with the Assessment Criteria of the program(s) the Participant is participating in has lapsed, TRUSTe will provide notice and, if not resolved within a reasonable timeframe as determined by TRUSTe, discontinue Participant's certification.
- b) TRUSTe may reinstate the Participant's certification if the Participant demonstrates to TRUSTe and TRUSTe has verified that all the required changes have been completed.
- c) Upon notice to the Participant, TRUSTe may discontinue immediately the Participant's certification if Participant is found in material breach of the Assurance Program Governance Standards or Assessment Criteria of the program(s) in which the Participant is participating. Material breaches include but are not limited to:
 - (1) Participant's material failure (e.g., unauthorized use of the TRUSTe seal, failure to complete Annual Review by the anniversary of the prior year certification date) to adhere to the Assessment Criteria of the program(s) in which they are participating;
 - (2) Participant's material failure to permit or cooperate with a TRUSTe investigation or review of Participant's policies or practices pursuant to the Assurance Program Governance policies, rules, and guidelines;
 - (3) Participant's material failure to cooperate with TRUSTe regarding an audit, privacy-related complaint, or the compliance monitoring activities of TRUSTe; or
 - (4) Any deceptive trade practices by the Participant.

- d) If TRUSTe discovers unauthorized use of the TRUSTe seal, TRUSTe will notify the Participant and discontinue immediately the Participant's certification

Referral to Relevant Privacy Authority: The JOP has confirmed with TRUSTe that TRUSTe's policies and procedures for referral to the appropriate public authority or enforcement agency, including responding to requests from enforcement entities in APEC Economies, are explained above as response to item 7 - *On-going Monitoring and Compliance Review Processes*.

The JOP has further confirmed that TRUSTe's referral to a privacy enforcement authority will also be contingent on whether or not the actions of the client rise to a level which would trigger jurisdiction by the privacy enforcement authority. TRUSTe does not refer clients to privacy enforcement authorities where such authority would be unable to take action against the referred client.

Other penalties – including monetary penalties – as deemed appropriate by the Accountability Agent: TRUSTe has informed the JOP of their policies and procedures for referral to the appropriate public authority or enforcement entity. TRUSTe does not have authority by contract to impose monetary penalties. Further, TRUSTe indicated to the JOP their belief that no commercial entity would enter into a contract with TRUSTe if TRUSTe were to have a contractual authority to impose monetary penalties. The JOP accepts the explanation of TRUSTe as common understanding for their marketplace, services, and location.

Response to Requests from Enforcement Entities: The JOP has confirmed that where possible TRUSTe will respond to requests from enforcement authorities in APEC Member Economies that reasonably relate to the CBPR-related activities of TRUSTe. TRUSTe's policies and procedures for referral to the appropriate public authority or enforcement agency, including responding to requests from enforcement entities in APEC Member Economies, are further explained above as response to recognition Question 7 – *On-going Monitoring and Compliance Review Processes*. In addition, TRUSTe makes publicly available statistics about the types of complaints received and how these complaints were resolved.

SIGNATURE AND CONTACT INFORMATION

By signing this document, the signing party attests to the truth of the answers given.

[Signature of person who has authority to commit party to the agreement] [Typed name]: Hilary Wandall

[Date]: XXXX, 2018

[Typed title]: General Counsel and Chief Data Governance Officer

[Typed name of organization]: TrustArc

[Address of organization]: 835 Market Street Suite 800, San Francisco, CA 94103 USA [Email address]: hwandall@trustarc.com

APEC recognition is limited to two years from the date of recognition. No later than one month prior to the anniversary of the date of recognition, the Accountability Agent must resubmit this form and any associated documentation to the appropriate government agency or public authority or as soon as practicable in the event of a material change (e.g. ownership, structure, policies).

NOTE: Failure to comply with any of the requirements outlined in this document may result in appropriate sanctions under applicable domestic law.

CROSS-BORDER PRIVACY RULES SYSTEM JOINT OVERSIGHT PANEL

2018 RECOMMENDATION REPORT ON THE
CONTINUED APEC RECOGNITION OF TRUSTe

Appendix A: TRUSTe Conflict of Interest Policies