

APEC Privacy Recognition for Processors (“PRP”)
Purpose and Background

The PRP helps personal information processors (“processors”) demonstrate their ability to provide effective implementation of a personal information controller’s (“controller”) privacy obligations related to the processing of personal information. The PRP also helps controllers identify qualified and accountable processors.

The APEC Cross Border Privacy Rules (“CBPR”) System, finalized in 2011, only applies to controllers, as the APEC Privacy Framework (the “Framework”), pursuant to which the CBPR System was created, also applies only to controllers.

The limited scope of the CBPR System has resulted in a call by controllers for the development of a mechanism that will help them identify qualified and accountable processors with whom to contract. Similarly, processors in the APEC Member Economies (“APEC economies”) have expressed an interest in such a mechanism, as it would enable them to demonstrate their ability to provide effective implementation of a controller’s privacy requirements; including to help small and medium-sized enterprises not known outside of their economy to become part of a global data processing network.

The PRP represents the baseline requirements a processor must meet in order to be recognized by an APEC-recognized Accountability Agent and provide assurances with respect to the processor’s privacy policies and practices.

Because the privacy principles in the Framework do not apply to processors, the PRP does not directly implement the Framework. The PRP can be used by a processor to help demonstrate its capacity of processing of personal information in general, but is designed to assure that processing is at least consistent with the controller’s applicable requirements for processing under the CBPR System.

Enforcement

Nothing in the PRP changes the allocation of responsibility in the controller-processor relationship under applicable laws, the Framework or the CBPR System. Under the Accountability principle in the Framework and the CBPR System, controllers are responsible for the activities processors perform on their behalf and they will remain so even when contracting with a PRP-recognized processor. Thus, processor activities remain subject to enforcement through enforcement against the controllers. This means that CBPR-certified controllers must apply due diligence in selecting their processors and engage in appropriate oversight over their processors, regardless of whether the processors are PRP recognized. Note that there is no requirement that a CBPR-certified controller must engage a PRP-recognized processor to perform information processing in order to comply with the Accountability principle in the Framework and the CBPR System.

Under the privacy laws of some APEC economies, processors recognized under the PRP may not be subject to direct government backstop enforcement in the same way that all CBPR-certified controllers are subject to such enforcement.

There are a number of oversight and enforcement mechanisms available across the participating APEC economies to ensure the effective oversight of processors recognized under the PRP.

These include:

- Where applicable, direct privacy enforcement authority backstop enforcement of the processor's compliance with the PRP program requirements;
- Enforcement by contract between the Accountability Agent and the processor, whereby the Accountability Agent assumes primary responsibility for enforcing the processor's compliance with the PRP program requirements;
- Government oversight over an Accountability Agent, and enforcement by the APEC Data Privacy Subgroup ("DPS") via the Joint Oversight Panel's authority to recommend to the DPS the suspension of an Accountability Agent in the event the Accountability Agent fails to perform its obligations under the Accountability Agent Recognition Criteria; and
- Mechanisms that can have the effect of enforcing privacy, such as private rights of action, and third-party beneficiary rights for enforcement authorities under the contracts between the Accountability Agents and the processors.