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MEDIA RELEASE

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Privacy and consumer groups win significant improvements in the APEC Cross Border Privacy Rules (CBPR) system

Introduction

The Australian Privacy Foundation (APF), along with other privacy groups, has been campaigning for two years for reform of the APEC Cross Border Privacy Rules system (APEC CBPRs). On 27 January 2015, APEC announced significant changes, meeting around 90% of our requests for improvement.

Background

The APF argued that the first implementation of the APEC CBPRs (using TRUSTe as the Accountability Agent (AA) in the United States) had failed to meet basic APEC Privacy Framework requirements. The APF campaigned on this issue for two years, culminating in a submission by a coalition of consumer and privacy groups from across APEC opposing TRUSTe's renewal as an Accountability Agent.

That renewal was due to be made in June 2014, but the decision was delayed until January 27 2015. Although APEC chose to ultimately approve TRUSTe's continued role as an Accountability Agent for a further 12 months, the decision was accompanied by massive changes and improvements in the APEC CBPRs, including a completely new set of TRUSTe APEC Program Requirements.

Improvements to the APEC CBPR system won by privacy and consumer groups

Major improvements include the introduction of a fairness test, a new stronger security requirement, and new access and correction rights. These items were all missing from the original TRUSTe program requirements. APEC has also finally published an accurate list of certified members, including contact details and certification expiry dates. The following table outlines the key changes:

Before	After
There was no "notice of collection" requirement for any circumstances other than online collection of data (APEC Criteria 2).	This restriction has been removed, and all the principles now apply to both online and offline collection..
There was no requirement for collection to be fair (APEC Criteria 7).	The new TRUSTe program requirements include a requirement that collection is fair (new Clause C1).
The requirement for correction of inaccurate data to be forwarded to agents and relevant third parties was missing (APEC Criteria 23 and 24).	The new TRUSTe program requirements include this requirement (new Clause 6G).
APEC requires security safeguards to be "proportional to sensitivity of information and the probability and severity of the harm" (Criteria 30), but this was missing from the TRUSTe requirements.	The new TRUSTe program requirements now include the proper APEC security test (new Clause D3).

Before	After
The requirement that access to personal information must be provided within a reasonable time was missing (APEC Criteria 37B).	The new TRUSTe program requirements include this requirement (new Clause 6K).
The requirement that correction should be provided within a reasonable time was missing (Criteria 38C).	The new TRUSTe program requirements include this requirement (new Clause 6K).
TRUSTe had failed to publish an accurate list of certified members.	The TRUSTe list of certified members is now accurate.
TRUSTe had failed to publish its application for accreditation.	This has not yet been published, but TRUSTe has promised to publish it shortly.
APEC had failed to publish an accurate list of certified members.	The APEC list of certified members is now accurate.
The two lists of certified members published by TRUSTe and APEC were never consistent.	The APEC and TRUSTe lists are now synced.
APEC had failed to publish contact details for certified members and information on the scope of their certification.	APEC now publishes the contact and scope details at: www.cbprs.org
APEC had failed to publish the expiry / renewal dates for each certification.	APEC now publishes the expiry / renewal dates at: www.cbprs.org

APEC's own documentation of its re-approval of TRUSTe makes no mention of the fact that these changes to practices came about through civil society exposure and pressure.

Next steps

Overall, the Australian Privacy Foundation is pleased with this result, after a lengthy campaign. However, three issues that we raised have only been partially addressed, and there is still room for further improvement of the APEC CBPR system. These issues are:

1. Conflicts of Interest

We complained that TRUSTe was certifying companies where the target company had the same owners and directors as TRUSTe. Although our complaint was found to be factually correct, APEC have decided that TRUSTe has sufficient internal safeguards in place to prevent any conflict of interest occurring. We will continue to campaign against this practice on behalf of consumers.

2. False claims

APEC have not directly addressed the issue of false claims of APEC certification (where US companies fraudulently claim in their privacy policies that they are APEC CBPRs members), but they did invite civil society organisations to send examples to APEC for unspecified "action". We have forwarded 12 examples to APEC and also to the US regulatory authorities.

3. Fine print exclusions

We complained that some APEC CBPRs members use fine print in their privacy policies to exclude certain activities, such as mobile applications and cloud services, from their APEC certification. APEC have concluded that this behaviour is allowed under the CBPRs rules. We will continue to campaign for improvements on this issue.

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