

APEC CROSS-BORDER PRIVACY RULES SYSTEM
JOINT OVERSIGHT PANEL

2017 RECOMMENDATION REPORT ON THE
CONTINUED APEC RECOGNITION OF JIPDEC

Submitted To: Ms. Shannon Coe
Chair, APEC Electronic Commerce Steering Group
18 April 2017

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EXECUTIVE SUMMARY

On January 20, 2016, JIPDEC¹ became Japan's first 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 JIPDEC'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; recognition for the same Accountability Agent will be for two years thereafter; one month prior to the end of the recognition period, 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 December 16, 2016 the Ministry of Economy, Trade and Industry of Japan (herein 'METI') received a timely application from JIPDEC for the renewal of its APEC recognition. After having reviewed the completeness of this application, METI forwarded this submission to the JOP on February 1, 2017.

SCOPE OF CONSULTATION PROCESS

Pursuant to Paragraph 24 of the JOP Protocols and Paragraph 37 of the Policies, Rules and Guidelines, members of the JOP began a consultative process to:

- Confirm the enforceability of an organization's APEC CBPR system obligations;
- Confirm JIPDEC's location and the relevant Privacy Enforcement Authority;
- Confirm that JIPDEC meets the recognition criteria as identified in the Accountability Agent APEC Recognition Application;
- Confirm that JIPDEC makes use of program requirements that meet the baseline established in the APEC CBPR system; and,
- Confirm that JIPDEC has provided the necessary signature and contact information.

The following Recommendation Report was drafted by the JOP² 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 JIPDEC, consultations with METI and the Personal Information Protection

¹ Japan Institute for Promotion of Digital Economy and Community

² For the purpose of this consultative process, JOP membership consist of Shannon Coe, United States Department of Commerce; Colin Minihan, Attorney-General's Department, Australia; and Shinji Kakuno, Ministry of Economy, Trade and Industry of Japan.

Commission of Japan (herein 'PPC') which will replace the role of METI as a Private Enforcement Authority on May 30, 2017 when the Amended Act on the Protection of Personal Information will be completely enforced, and review of JIPDEC's relevant program requirement.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified that Japan is a participant in the APEC CBPR system and has demonstrated the enforceability of the APEC CBPR program requirements pursuant to the information provided in Annex B of Japan's Notice of Intent to Participate;

Having verified that JIPDEC is located in Japan and is subject to the Privacy Enforcement Authority described in Annex A of Japan's Notice of Intent to Participate;

Having verified with Administrators of the APEC CPEA that Japan's competent ministers³ of the Act on the Protection of Personal Information are participants in the APEC CPEA;

Having determined that the Amended Act on the Protection of Personal Information will be completely taken effect from 30th of May, 2017, even though this amendment will not have any effects of making Japan's participation in the APEC CBPR impossible, Japan's competent ministers will lose their legal foundation based on the Act on the Protection of Personal Information to participate in APEC CPEA and PPC will be empowered to enforce the Amended Act on that date accordingly, and having determined that PPC has a concrete plan to participate in the APEC CPEA from that date.

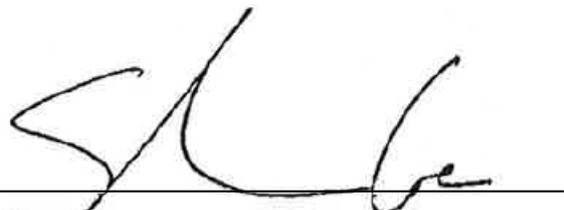
Having determined, in the opinion of the members of the JOP, that JIPDEC has policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the APEC CBPR system; and,

Having verified that JIPDEC has provided the required signature and contact information;

The JOP recommends APEC member economies consider the conditions established in Paragraph 6.2 (ii) of the *Charter of the APEC Cross-Border Privacy Rules System Joint Oversight Panel* to remain met by JIPDEC; the conditions for re-attestation established in Paragraph 24 of the Protocols of the Joint Oversight Panel to have been met; and to grant JIPDEC's request for continued APEC recognition to certify organizations within Japan and under the jurisdiction of the competent authorities of the *Act or the Amended Act on the Protection of Personal Information* as compliant with the APEC CBPR system pursuant to the established guidelines governing the operation of the APEC CBPR system under the condition of the participation of PPC or other relevant Privacy Enforcement Authority in APEC CPEA from Japan by May 30, 2017.

³ Currently in Japan, there are 16 competent ministers including that of METI under the Act on the Protection of Personal Information. On May 30, 2017, which is the date of complete enforcement of the Amended Act on the Protection of Personal Information, PPC will replace current 16 authorities to be a Japan's single personal information protection authority. PPC will be eligible to participate in the APEC CPEA from May 30, 2017 and has a concrete plan to participate in the APEC CPEA from that date.

Signed,

A handwritten signature in black ink, appearing to be 'S. Coe', written over a horizontal line.

Shannon Coe

Chair, Joint Oversight Panel, United States Department of Commerce

A handwritten signature in black ink, appearing to be 'C. Minihan', written over a horizontal line.

Colin Minihan

Co-Chair, Joint Oversight Panel, Attorney-General's Department, Australia

A handwritten signature in black ink, appearing to be 'Shinji Kakuno', written over a horizontal line.

Shinji Kakuno

Co-Chair, Joint Oversight Panel, Ministry of Economy, Trade and Industry, Japan

18 April 2017

REQUEST FOR CONSENSUS DETERMINATION

APEC member economies are asked to make a determination as to JIPDEC's request for renewal of its APEC 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 APEC recognition for failure to meet any of the recognition criteria required in the *Accountability Agent APEC Recognition Application*. When making this determination, any APEC member economy may request additional information or clarification from JIPDEC or the JOP. If no objection is received within the deadline for consensus determination as established by the APEC/ECSG Chair, the request will be considered to be approved by the APEC/ECSG as recommended in this report. Should APEC member economies determine that JIPDEC 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 May 30, 2017 as they should confirm if PPC participates in the CPEA by that date. JIPDEC may re-apply for renewal of its APEC recognition one month prior to the end of its APEC recognition period if it so wishes, following the same process described herein.

1. ENFORCEABILITY

Is the Applicant subject to the jurisdiction of the relevant Privacy Enforcement Authority in an APEC CBPR system participating economy?

Recommendation:

The JOP is satisfied that JIPDEC continues to be subject to the jurisdiction of the competent authorities of the *Act or the Amended Act on the Protection of Personal Information*.

Discussion:

In its Notice of Intent to Participate, Japan described its enforcement authority for personal information protection as follows:

According to Article 46 of the *Act on the Protection of Personal Information*, the Privacy Enforcement Authority may have an Accountability Agent make a report on the businesses authorized pursuant to Article 37 of the Act.

Additionally, according to Article 47, the Privacy Enforcement Authority may order the Accountability Agent to improve its methods of conducting its authorized businesses.

If an Accountability Agent fails to comply with this order, the Privacy Enforcement Authority may rescind the authorization issued to the Accountability Agent according to Article 48 (1). In this case, the Accountability Agent cannot continue with any businesses related to the APEC CBPR system.

The Act on Protection of Personal Information

(Collection of Reports)

Article 46

The competent minister may have an Authorized Personal Information Protection Organization⁴ make a report on the authorized businesses to the extent necessary for implementation of the provisions of this section.

(Orders)

Article 47

The competent minister may order an Authorized Personal Information Protection Organization to improve the method of conducting its authorized businesses, to amend its personal information protection guidelines, or to take any other necessary measures to the extent necessary for implementation of the provisions of this section.

⁴ Authorized Personal Information Protection Organization under the *Act on the Protection of Personal Information* may take the role of the Accountability Agent of the APEC CBPR system. It is required for Japan's Accountability Agent to be an Authorized Personal Information Protection Organization.

(Rescission of Authorization)

Article 48 (1)

If an Authorized Personal Information Protection Organization falls under any of the following items, the competent minister may rescind its authorization:

- (i) Cases of falling under item (i) or (iii) of Article 38 (Clause of Disqualification)
- (ii) Cases of falling not to conform with any of the items of Article 39 (Authorization Standards)
- (iii) Cases of violating the provisions of Article 44 (Prohibition of Utilization Other Than for Intended Purposes)
- (iv) Cases of not complying with orders in the preceding article
- (v) Cases of having received the authorization in Paragraph (1) of Article 37 by dishonest means

In addition, as the Act on the Protection of Personal Information was amended in September 2015 and the amendment is to completely come into effect on May 30, 2017, in the process of JOP's review over the application of JIPDEC for the renewal of its APEC recognition, Japan described its enforcement authority for personal information protection under the complete enforced amendment of the Act as follows:

According to Article 56 of *the Amended Act on the Protection of Personal Information*, PPC may call for the Accountability Agent to report on its accredited services under Article 47 of the Act.

Additionally, according to Article 57, PPC may order the Accountability Agent to improve a method of rendering its authorized services.

If an Accountability Agent fails to comply with this order, the Privacy Enforcement Authority may rescind the authorization issued to the Accountability Agent according to Article 58 (1). In this case, the Accountability Agent cannot continue with any businesses related to the APEC CBPR system.

The Amended Act on the Protection of Personal Information (to be effective on May 30, 2017)

(Calling for a Report)

Article 56

The Personal Information Protection Commission may, to the extent necessary to implement the provisions under this section, call for an accredited personal information protection organization to report on its accredited services.

(Order)

Article 57

The Personal Information Protection Commission may, to the extent necessary to implement the provisions of this section, order an accredited personal information protection organization to improve a method of rendering accredited services, amend a personal information protection guideline, or take any other necessary action.

(Rescinding the Accreditation)

Article 58 (1)

The Personal Information Protection Commission may, when an accredited personal information protection organization falls under any of each following item, rescind the accreditation.

- (i) when having led to falling under Article 48, item (i) or item (iii)
- (ii) when having become unconformable to any of each item of Article 49
- (iii) when having violated the provisions of Article 54
- (iv) when disobeying an order under the preceding Article
- (v) when having received an accreditation under Article 47, paragraph (1) by improper means

The JOP has confirmed that, as JIPDEC has been authorized by the Minister of Economy, Trade and Industry as an Authorized Personal Information Protection Organization under the Act on the Protection of Personal Information since June 2005, JIPDEC is subject to the regulatory oversight by METI as a Privacy Enforcement Authority of Japan, which will be replaced by PPC when the amended Act come into effect on May 30, 2017.

As mentioned above, METI or PPC may order the Accountability Agent to improve its methods of conducting its authorized services. If the Accountability Agent fails to comply with this order, METI or PPC may rescind its authorization. In this case, the Accountability Agent cannot continue functions related to the APEC CBPR system, which is conducted also as an Authorized Personal Information Protection Organization under the Act on the Protection of Personal Information in Japan.

The JOP has further confirmed that Japan is a recognized participant in the CBPR system and that METI is a participant in the APEC CPEA before May 30, 2017 and PPC has a concrete plan to participate in the APEC CPEA from May 30, 2017, which is the date of complete enforcement of the amended Act. JIPDEC publicly indicates its participation in the APEC CBPR system including allowing its name to appear on a list of recognized APEC Accountability Agents. JIPDEC agrees to continue to post all APEC CBPR-certified companies on its website as well as the applicable APEC CBPR program requirements. The JOP has verified that JIPDEC has completed and signed the *Accountability Agent APEC Recognition Application*.

2. RECOGNITION CRITERIA

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

Conflict of Interest (Recognition Criteria 1-3)

- 1. Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent APEC Recognition Application have been met, and submit all applicable written policies and documentation.*
- 2. 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 APEC Recognition Application.*
- 3. 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 JIPDEC meets Recognition Criteria 1-3.

Discussion:

JIPDEC submitted their internal documents on Rules for Operation as an Authorized Personal Information Protection Organization (herein 'NTK 100'), Rules for Operation of the CBPR Certification Business (herein 'NTK 300') and Detailed Rules for Operation of the CBPR Certification Business (herein 'NTK 310'), which describe how JIPDEC would avoid possible conflicts of interest.

Regarding requirement 1, JIPDEC continues to commit avoid any acts that could raise doubts concerning its fair and neutral position as an Accountability Agent. JIPDEC does not offer or provide consulting businesses or other servicing businesses that could impair its fairness. JIPDEC continues to use certification standards. In addition, JIPDEC is obliged to submit a report on its businesses authorized or accredited by the competent authorities upon request.

Regarding requirement 2, JIPDEC continues to commit not to allow any officer and employee of the CBPR Certification Businesses Office who has interest with an applicant organization to be engaged in the CBPR certification businesses for such applicant organization. If JIPDEC finds that any officer or employee has an interest with an applicant organization in the course of certification business, it shall immediately dismiss such officer or employee from the CBPR Certification Business Office.

Regarding requirement 3, JIPDEC continues to commit to disclose all relevant information when it receives an inquiry or is asked for explanation from the JOP or APEC member economies concerning possible conflict of interests in order to ensure that there is no such conflict of interest.

Program Requirements (Recognition Criterion 4)

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 APEC Recognition Application to map its existing intake procedures program requirements.

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criterion 4.

Discussion

JIPDEC has used *Annex C of the Accountability Agent APEC Recognition Application to map their existing program requirements to the established CBPR program requirements.*

Certification Process (Recognition Criterion 5)

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 APEC Recognition Application have been met.

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criterion 5.

Discussion:

JIPDEC has documents of internal procedures for assessing an applicant organization's policies and practices to confirm their compliance with the CBPR system requirements. In its application, JIPDEC explained the following outline of its certification process:

- 1) JIPDEC assesses application documents, and identifies non-compliance if any.
- 2) In case JIPDEC finds non-compliance, applicant organization will be informed about its major non-compliance and be provided with an opportunity to make inquiries and certain period of time for remedial actions.
- 3) After JIPDEC confirms the improvements of applicant's policies and practices, it will prepare an Assessment Report.
- 4) When JIPDEC confirms that the applicant organization fulfills all requirements as a result of the certification assessment, it shall grant a CBPR certification.

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

6. 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) of Annex A of the Accountability Agent APEC Recognition Application.

- 7. 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) of Annex A of the Accountability Agent APEC Recognition Application.*

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criteria 6-7.

Discussion:

JIPDEC has documents of its internal procedures to ensure integrity of its certification processes and to monitor compliance of the certified organization. As JIPDEC explains in the application documents, it has established monitoring and compliance review mechanisms. These mechanisms include following functions and procedures:

- 1) JIPDEC reviews matters disclosed on the website of the certified organizations, and handles inquires and complaints from individuals, Privacy Enforcement Authorities and other Accountability Agents within and /outside of Japan.
- 2) JIPDEC prepares and maintains a record of the implementation of the monitoring and the results thereof.
- 3) If any suspected breach of the program requirements by a certified organization is found as a result of the monitoring processes, JIPDEC shall carry out a Special Assessment even during the validity period of certification.

Re-Certification and Annual Attestation (Recognition Criterion 8)

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

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criterion 8.

Discussion:

The JOP has confirmed that JIPDEC maintains a procedure in which CBPR certified organizations are required to receive a re-certification assessment prior to the expiration date of its CBPR certification.

Dispute Resolution Process (Recognition Criteria 9-10)

- 9. 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.*

10. 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 JIPDEC meets Recognition Criteria 9-10.

Discussion:

The JOP has confirmed that JIPDEC has an established dispute resolution mechanism and operates it according to its documented procedures. In addition, JIPDEC continues to commit not to consign business relating to handling of complaints and consultation to any third party. Furthermore, JIPDEC cooperates with Privacy Enforcement Authorities and other APEC recognized Accountability Agents for handling complaints.

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

- 11. Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.*
- 12. 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.*
- 13. Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A of the Accountability Agent APEC Recognition Application.*
- 14. 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].*
- 15. 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 JIPDEC meets Recognition Criteria 11-15.

Discussion:

The JOP has confirmed that JIPDEC has established mechanisms to enforce its program requirements and to ensure compliance of CBPR certified organizations. These mechanisms include following procedures:

- When JIPDEC identifies non-compliance of a CBPR certified organization, it shall send the finding to the CBPR certified organization and request a report on improvement. JIPDEC will then conduct assessment of the improvement.
- JIPDEC shall rescind the certification when it finds false information in the application documents or a CBPR certified organization does not perform its obligations as a CBPR certified organization.
- JIPDEC shall disclose the name of a CBPR certified organization on JIPDEC's website when its certification is rescinded and registration is cancelled.
- JIPDEC shall report on the non-compliance to the relevant Privacy Enforcement Authority.
- JIPDEC will cooperate with other Accountability Agents to handle complaints where necessary.

3. CASE NOTE AND STATISTICS

Will the Applicant provide relevant information on case notes and statistics as outlined in Annex D and E of the Accountability Agent APEC Recognition Application?

Recommendation:

The JOP is satisfied that JIPDEC meets the Case Notes and Statistics requirements as stipulated in Annexes D and E of the Accountability Agent APEC Recognition Application.

Discussion:

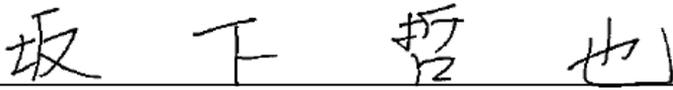
JIPDEC continues to express their intent to make use of the case note template in Annex D of the Accountability Agent APEC Recognition Application to annually send anonymized case notes to APEC member economies as a condition of their APEC recognition. The case notes and statistics will be also posted on the website of JIPDEC periodically.

In addition, competent authorities of the Act or the Amended Act on the Protection of Personal Information may collect reports on the status of implementation of the act or the amended act from the Authorized Personal Information Protection Organization, which are submitted to the Prime Minister's Office. The compiled reports will be then made public periodically.

On the date of submission of the application for the renewal of its APEC recognition, JIPDEC was just reviewing the first CBPR application case; therefore, JIPDEC has no Case Notes to report yet. JIPDEC has not accepted any complaints since APEC's recognition of JIPDEC as an Accountability Agent.

4. SIGNATURE AND CONTACT INFORMATION

By signing this document, the signing party agrees to the findings of the Joint Oversight Panel contained herein and attests to the truth of the information provided to the Joint Oversight Panel pursuant to the application for the APEC Recognition.



A handwritten signature in black ink, consisting of the Japanese characters '坂下哲也' (Sakashita Tetsuya), written over a horizontal line.

[Signature of person who has authority to commit party to the agreement]

[Typed name]: Tetsuya SAKASHITA

[Date]: 18 April 2017

[Typed title]: Managing Director

[Typed name of organization]: JIPDEC

[Address of organization]: Roppongi First Building, 1-9-9 Roppongi, Minato-ku Tokyo, 106-0032 Japan

[Email address]: sakashita-tetsuya@jipdec.or.jp

[Telephone number]: +81 3 5860 7558

The first APEC recognition for an Accountability Agent is limited to one year from the date of recognition. Recognition for the same Accountability Agent will be for two years thereafter. One month prior to the end of the recognition period, 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.