

# **International Data Flows:** *Privacy Conceptual Approaches*

Joseph Alhadeff

VP Global Public Policy and CPO

Oracle

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ORACLE

# Technology Trends

- Always on, 24x7x365...
- Digital convergence
- Manage and consolidate data on the back end – single source of truth
- Sensor and location aware environments
- Security as a concern and priority
- Protection of Data and allocation of rights and privileges
- Process transformation and optimization vs. automation
- Temporal and geographic disintermediation of functions - globalization

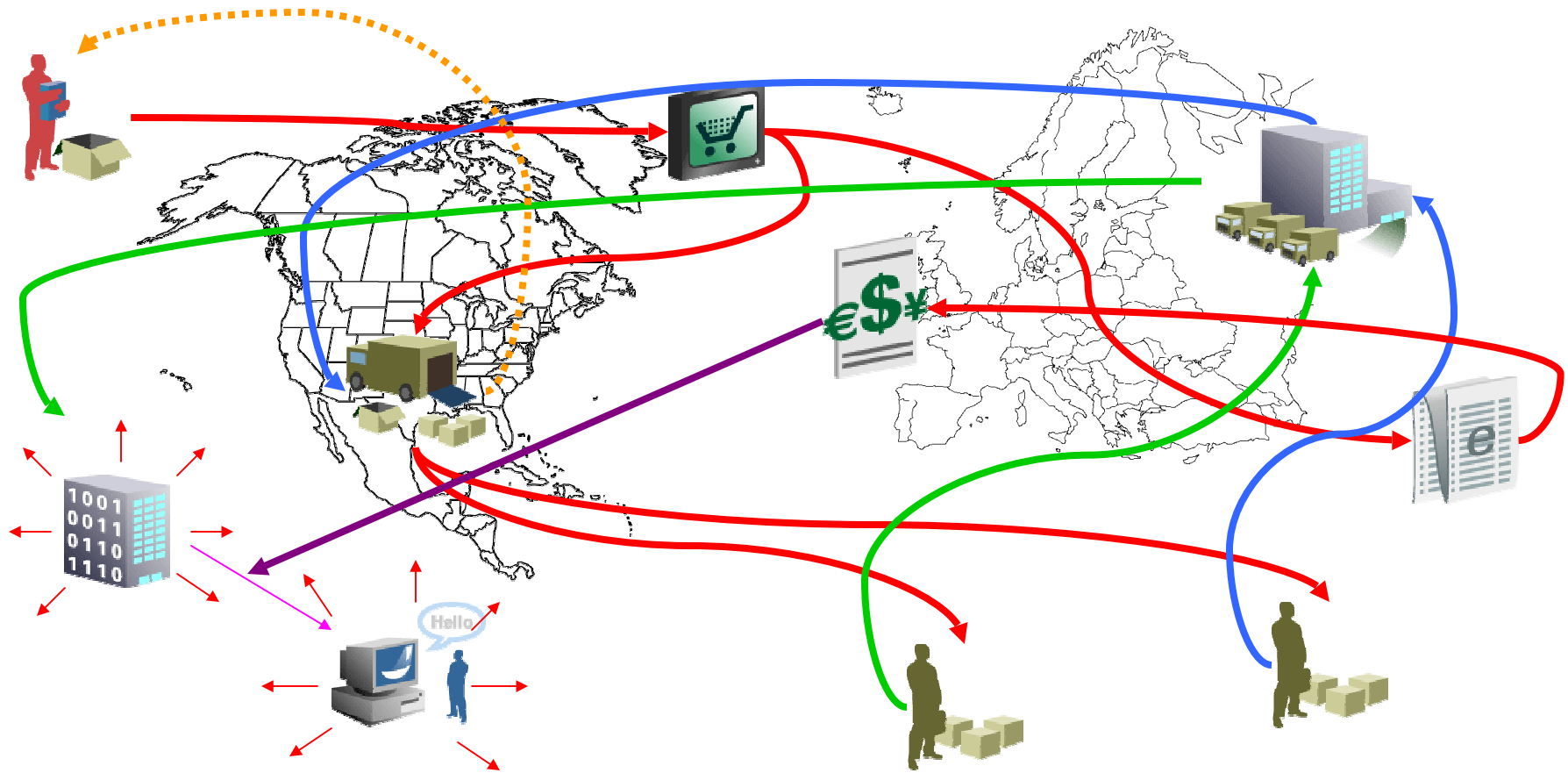
# Changes 1995 to 2006

- Fat pipes – increase in backbone and capacity, compression, fiber optics, caching...
- Shorter attention span and patience: online customers with expectations of 24x7x365 service and faster response
- Business is gaining economies of scope and scale by specialization and consolidation – consolidating data centers, specialized functions, information flows across functions
- Functions and specializations being distributed in cost-effective manner across global locations reflecting global markets and customer needs
- Follow-the-sun service and support model

# The impacts of digitization

- The Information Economy has enabled business to distribute functions across geographies (payment processing, credit verification, customer service, support, data centers, follow-the-sun models)
- Supply and distribution chains are becoming more globally integrated
- Businesses-to-business and business-to-consumer and consumer-to-consumer interactions are becoming more global
- New services are driving even more increased information flows and customers may enter the system across multiple media from many jurisdictions

# Networks are the new spice routes



# OECD Guideline Principles

- The collection and use of data should be disclosed and users be given an opportunity to decline collection
- Data should be collected, stored, processed, and communicated only for legitimate purposes;
- Data should be current, accurate, and relevant to the intended use; and
- Data subjects should be entitled to examine, where appropriate, data relating to them, and to obtain correction or deletion of such data, if justified.

# APEC Privacy Framework

## Objectives

- Provide some framework concepts for those countries that haven't developed an approach to privacy
- Develop methods of regional mechanisms to facilitate data flows while providing for cooperative enforcement

## Factors

- Maximize benefits of information flows as well as effective privacy protection,
- Value of flexibility
- Harm Prevention
- Accountability
- Corporate rules and regional recognition

# Framework Principles

1. Preventing Harm – privacy protections should focus on preventing harm and misuse
2. Notice – clear & easily accessible
3. Collection Limitation – collect what’s relevant in a lawful & fair manner
4. Uses of Personal Information – for expected and compatible purposes, with consent, or where necessary
5. Choice – where appropriate, provide clear, accessible mechanism to exercise choice
6. Integrity – personal information should appropriately accurate, complete and up-to-date

# Framework Principles II

7. Security – appropriate safeguards to protect against unauthorized access, use, modification or disclosure
8. Access & Correction – important (but not absolute) rights
9. Accountability – controllers are accountable for compliance with all Principles and must use reasonable steps to ensure that recipients of personal information also comply

# Challenges of Compliance

- Global flows of information result in spider webs of interrelations
  - May include layers of subsidiaries vendors, contractors and agents bound by some level of contract
  - Across various media, devices, systems and technologies
- Finding chokepoints of compliance
- Assuring consistent policies and contractual responsibility across network of entities that may be involved in information flows

# Wrestling with global compliance



- Article 29 Group
- Adequacy
  - Safe harbor
  - Consent
- Derogations
  - Contract
  - BCR

# Accountability



The next wave...

- Greater flexibility
- Transparency /  
Simplicity
- APEC Framework
  - PCM (may be  
BCR...)
  - Win-Win-Win

# Teamwork and Cooperation



- Global issues
- Limited resources
- Need for cooperation
  - Public
  - Private
  - Public Private
- Work at OECD
  - Possible leverage from the private sector

# The World is Flat: Global Sourcing Issues



Un missionnaire du moyen âge raconte qu'il avait trouvé le point  
où le ciel et la Terre se touchent...

# The Current Context

- Increased reporting of US security breaches
- India is not immune either
  - The world is flat again, indeed
- Increased public concern over ID theft and privacy and security as they relate to personal data
- Jurisdictional and other questions related to effective redress
- Questions related to the Patriot Act

# The Current Context: Perception and Reality

- The Mother Teresa Documentary
- The “them” and “over there” factors
- Call center frustration
- No security
- No ability to enforce contracts
- Corporate office parks
- They are very much like us...
- One rung above burger flipper vs. good job
- ISO 17799
- Contract Act from 1870's

# Concepts for Privacy Approaches

- Consistent with need for and benefits of global information flows
- Protection as appropriate to type and use of information – business directory, for instance
- Private sector role
  - Innovative policy instruments and mechanisms
  - Recognition of value of private sector bodies, mediation/dispute resolution
- Flexible approach across different legal frameworks
- Cooperation in cross-border transfer and responsibility
  - Not adequacy, but accountability

# Framework Foundation Steps:

- Focus on rationale and objective
- Review existing laws and processes (including Contract Law and other related laws and processes)
- Review current state of the data processing and global sourcing industry re: privacy and security
- Gap analysis to relevant international instruments and norms
- Selective amendment or revision of existing laws and processes as needed to achieve objectives
- The need for more, better and targeted information to address gaps in perception

# Risk Management: Privacy and Security Global Sourcing Analysis

- Contracts
  - Chain of accountability
  - Uses – privacy limits
  - Security – levels, technology...
  - Jurisdiction – where litigated
- Business Confidence
  - Practices & Policies
  - Local assistance
  - Credible response
- Enforcement
  - Investigatory resources
  - Legal/Judicial expertise
- Local law
  - enforcement of contracts
  - injunctive relief
  - prosecution of offences

# Holistic Solution

- Policies, Practices and Technology
- Contracts/BCR...
- Compliance Team
- Training
- Enforcement/Oversight
- Incidence Response/Debrief

# Possible Contract Features

## Information Controller/ Vendor

- Compliance requirements
- Right/Use Limitation
- Transfer restrictions if any
- Conditions of Breach

## Vendor /Processor

- Incorporates relevant requirements and restrictions
- May require adherence to global policies
- Oversight / Right of Audit

# Any Questions?

