

# PRIVACY HORIZONS: TERRA INCOGNITA

29<sup>th</sup> International Conference of  
Data Protection and Privacy Commissioners

September 25 to 28, 2007  
Montreal, Canada



## LES HORIZONS DE LA PROTECTION DE LA VIE PRIVÉE : TERRA INCOGNITA

29<sup>e</sup> Conférence internationale des commissaires  
à la protection des données et de la vie privée

du 25 au 28 septembre 2007  
Montréal, Canada

# DATA FLOWS & DATA MIRRORING

David Loukidelis

Information and Privacy Commissioner for  
British Columbia

[oipc.bc.ca](http://oipc.bc.ca)

# Changing Nature of Trans-Border Data Flows (TBDF)

- As the other members of the panel have noted, the nature, complexity, scale and range of global data flows have dramatically changed in just 10 years
- The economics are such that bandwidth will continue to grow, storage will get ever cheaper and ICT will go on evolving
- As we navigate the New Spice Routes (Alhadeff), challenges to traditional models of data protection (DP) will grow more acute

# Challenges to Traditional Accountability Mechanisms

- Governments and DPAs have long struggled with implications for DP enforcement of territorial limits of jurisdiction
- In Canada, constitutional limits on government authority result in a patchwork of similar but somewhat varying privacy laws
- Canadian DPAs thus face TBDF challenges similar to those across international borders
- Canadian legislative harmonization is desirable (compare US Uniform Law Conference approach)

## Challenges to Accountability (cont'd)

- Canadian DPA co-operation is desirable and is a reality, in public and private sector DPA activities
- Challenges to governments and DPAs are even greater in international TBDF
- Territorial limits on jurisdiction aside, basic nature of legal systems will vary, regulatory approaches often differ and cultures may clash
- This has to some degree been true since simpler days of 'A to B' batch data transfers

## Responding to Challenges

- Export control approach reflected in EU laws can be seen as one attempt to address challenges of TBDF
- US Safe Harbor is a noteworthy example of the challenges raised by varying policy responses to privacy issues, where one response is the export control approach
- Another response has been the model contract clauses approach (EU and ICC)

# Meeting New Challenges

- Rapidly changing nature and extent of TBDF demand new solutions—export control and model contract approaches are increasingly ill-suited for TBDF challenges
- What can be done?
- Not a new question—and there are many possible answers

## Regulatory Co-operation

- Bilateral DPA co-operation can be useful for specific complaints or cases (this can ease though not eliminate territorial limits issue—*e.g.*, Abika case and Canada-US co-operation)
- DPA information sharing can help those co-operating better allocate enforcement resources

## Regulatory Co-operation (cont'd)

- Multilateral co-operation can achieve this and more—e.g., through creation of harmonized resources that smooth edges of privacy framework disparities
- Asia-Pacific Privacy Authorities organization as an example of multilateral co-operation in a regional international context

## Co-operation & What Else?

- There are clearly some serious limits on how fruitful co-operation can be—it cannot overcome the challenges mentioned earlier, most prominent being differences in legislative/regulatory regimes
- These challenges continue to drive the search for new approaches, to complement or replace existing approaches such as model contracts and export controls

# Cross-Border Privacy Rules (CBPR) Systems

- Leaving international standards aside for now (they have considerable merit in principle), CBPRs involve a corporation adopting privacy rules to govern their global conduct
- CBPRs can be underpinned by an international 'standard' like the APEC Privacy Framework
- Next step is for APEC and other organizations to establish accountability systems

## CBPRs Systems (cont'd)

- Challenge is to find alternative, complementary approaches for ensuring accountability for privacy practices in a complex TBDF world
- Accountability agents like trustmarks offer promise—free of territorial restraints they could offer ADR, audit and redress and complement DPA and government action

## Conclusion

- CBPRs systems offer promise
- Work on international standards should continue (OECD meets APEC meets ISO?)
- DPAs can and should increase the level of co-operation on various fronts
- There is no panacea, but an array of approaches can serve stakeholders well in the brave new world of TBDF