

**Accountability Agent Application Materials and APEC Joint Oversight Panel
Recommendation Report**

On April 30, 2024, the Global CBPR Forum (Forum) announced the recognition of eight (8) Accountability Agents to issue Global CBPR and Global PRP certifications. Noting that the Accountability Agent Recognition Criteria under the Global Cross-Border Privacy Rules (CBPR) and Global Privacy Recognition for Processors (PRP) Systems are based on the Asia Pacific Economic Cooperation (APEC) Accountability Agent Recognition Criteria, the Forum recognized the APEC-endorsed Accountability Agents to operate in the following jurisdictions:

- Japan: Japan Institute for Promotion of Digital Economy and Community
- Korea: Korea Internet Security Agency
- Singapore: Infocomm Media Development Authority
- Chinese Taipei: Institute for Information Industry
- United States: BBB National Programs, NCC Group, Schellman, TRUSTe

The Forum recognized the Accountability Agents listed above for the duration of their current terms of APEC endorsement. Once their initial term expires, each Accountability Agent will be required to reapply to the Forum for recognition for another two-year term.

The Accountability Agent's application materials submitted to APEC and the APEC Joint Oversight Panel Recommendation Report recommending recognition under the APEC-CBPR System, having been deemed sufficient for the purpose of initial and concurrent recognition under Global CBPR System, are attached.

**CROSS-BORDER PRIVACY RULES (CBPR) SYSTEM AND PRIVACY RECOGNITION
FOR PROCESSORS (PRP) JOINT OVERSIGHT PANEL**

2024 RECOMMENDATION REPORT ON THE CONTINUED APEC RECOGNITION OF
TRUSTARC AS AN ACCOUNTABILITY AGENT FOR THE CBPR AND PRP SYSTEMS

Submitted To: Ekapong Rimcharone

Chair, Digital Economy Steering Group

August 2, 2024

Table of Contents

EXECUTIVE SUMMARY.....	3
SCOPE OF CONSULTATION PROCESS	3
RECOMMENDATION OF THE JOINT OVERSIGHT PANEL	4
REQUEST FOR CONSENSUS DETERMINATION	5
I. ENFORCEABILITY.....	6
II. RECOGNITION CRITERIA	8
Conflicts of Interest (Recognition Criteria 1-3).....	8
Program Requirements (Recognition Criterion 4).....	9
Certification Process (Recognition Criterion 5)	10
On-going Monitoring and Compliance Review Processes (Recognition Criteria 6, 7).....	11
Re-Certification and Annual Attestation (Recognition Criterion 8).....	12
Dispute Resolution Process (Recognition Criteria 9, 10)	13
Mechanism for Enforcing Program Requirements (Recognition Criteria 11-15).....	15
CASE NOTES AND STATISTICS	18
SIGNATURE AND CONTACT INFORMATION	19

EXECUTIVE SUMMARY

On June 25, 2013, the Asia-Pacific Economic Cooperation (APEC) recognized TRUSTe (renamed to TrustArc in 2017)¹ as the first U.S. Accountability Agent under the Cross Border Privacy Rules (herein ‘CBPR’) System. 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 and for two years thereafter, one month prior to which, an Accountability Agent may re-apply for APEC recognition, following the same process as the original request for recognition. TrustArc has been continued to be recognized since 2013. On July 31, 2019, the United States Department of Commerce received an early application from TRUSTe to continue to be recognized CBPR System Accountability Agent in the United States. TRUSTe has requested an earlier review of their documentation to sync their recertification timelines for their existing CBPR and PRP System accreditations. After having reviewed the completeness of this application, the United States Department of Commerce forwarded this submission to the JOP on November 26, 2019, and the JOP recommendation report for TrustArc’s continued recognition was endorsed on December 3, 2019. On October 31, 2021, TRUSTe submitted a renewal application to the United States Department of Commerce for re-certification as a CBPR and PRP Systems Accountability Agent in the United States, and the JOP’s recommendation report for TrustArc’s continued recognition was endorsed on March 7, 2022.²

In accordance with the Policies, Rules, and Guidelines, on February 7, 2024, TrustArc submitted a renewal application to the U.S. Department of Commerce for re-certification as a CBPR and PRP Systems Accountability Agent in the United States. After having reviewed the completeness of this application, the U.S. Department of Commerce forwarded this submission to the JOP on February 13, 2024. The JOP found that TrustArc continues to meet the requirements to serve as an Accountability Agent in the United States. TrustArc’s continued recognition as an Accountability Agent will be valid for two years from the date of endorsement.

SCOPE OF CONSULTATION PROCESS

Pursuant to Paragraph 7.2 of the *Charter of the Joint Oversight Panel*, members of the JOP began a consultative process with representatives from TrustArc and the U.S. Federal Trade Commission (a participant in the Cross-Border Privacy Enforcement Arrangement) to:

- Confirm the enforceability of an organization’s an organization’s CBPR and/or PRP obligations once certified as CBPR and/or PRP compliant by TrustArc;
- Confirm TrustArc’s location and the relevant enforcement authority;
- Confirm that TrustArc continues to meet the recognition criteria as identified in the *Accountability Agent Applications for APEC Recognition for the CBPR and PRP*

¹“TRUSTe” is the brand name that TrustArc offers its Assurance Programs and Dispute Resolution Services under. Instances in this report where “TRUSTe” is used refers to the Assurance Program or dispute resolution service, or a feature of the program or service. TrustArc is used when referring to the company or our employees that facilitate the provision of the TRUSTe programs or services.

Systems;

- Confirm TrustArc continues to make use of program requirements that meet the baseline established in the CBPR and PRP systems; and
- Confirm TrustArc has provided the necessary signature and contact information.

The following Recommendation Report was drafted by members of the JOP.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified the United States is a participant in the APEC Cross Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP) Systems and has demonstrated the enforceability of the CBPR and PRP program requirements pursuant to the information provided in Annex B of the United States' Notice of Intent to Participate in the CBPR and PRP Systems;

Having verified TrustArc is located in the United States and is subject to the enforcement authority described in Annex A of the United States Notice of Intent to Participate in the CBPR and PRP Systems;

Having verified with the Administrators of the APEC Cross Border Privacy Enforcement Arrangement (CPEA) that the United States Federal Trade Commission, a Privacy Enforcement Authority in the United States, is a participant in the APEC CPEA;

Having determined, in the opinion of the members of the JOP, that TrustArc continues to have policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the CBPR and PRP Systems;

Having verified TrustArc has provided the required signature and contact information, and;

The JOP recommends APEC member economies consider the conditions established in 7.2 (ii) of the Charter of the Joint Oversight Panel to have been met by TrustArc and to grant TrustArc' request for APEC recognition to certify organizations within the United States and under the jurisdiction of the United States Federal Trade Commission as compliant with the CBPR and PRP Systems pursuant to the established guidelines governing the operation of the CBPR and PRP Systems.

Submitted by the Joint Oversight Panel

Sarah Pham
Representative of the Chair, Joint Oversight
Panel
Department of Commerce, United States of
America

Evelyn Goh
Member, Joint Oversight Panel
Infocomm Media Development Authority,
Singapore

Makiko Tsuda
Member, Joint Oversight Panel
Ministry of Economy, Trade and Industry,
Japan

REQUEST FOR CONSENSUS DETERMINATION

APEC Member Economies are asked to make a determination as to TrustArc's request for continued recognition as an Accountability Agent, taking into account the JOP's recommendation. Any APEC Member Economy has the right to reject the request of an applicant Accountability Agent for recognition for failure to meet any of the recognition criteria required in the *APEC Accountability Agent Recognition Application*. When making this determination, any APEC Member Economy may request additional information or clarification from TrustArc or the JOP. If no objection is received within the deadline for consensus determination as established by the Digital Economy Steering Group (DESG) Chair, the request will be considered to be approved by the DESG. Should Member Economies determine that TrustArc has met the necessary criteria, APEC recognition will be for two years from the date of recognition, one month prior to which, TrustArc may re-apply for APEC recognition if it so wishes, following the same process described herein.

I. ENFORCEABILITY

Is the Applicant subject to the jurisdiction of the relevant enforcement authority in a CBPR and PRP participating Economy?

Recommendation

The JOP is satisfied that TrustArc continues to be subject to the jurisdiction of the United States FTC, a participant in the APEC CPEA.

Discussion

In its *Notice of Intent to Participate in the CBPR and PRP Systems*, the United States described its enforcement authority as the United States FTC and the United States Patent and Trademark Office, as well as described their respective enforcement functions:

To become a recognized APEC Accountability Agent, an applicant must complete and sign the *Accountability Agent APEC Recognition Application*. By publicly posting its Recognition Application, a recognized APEC Accountability Agent further represents that the answers contained in the document are true.

In addition, any organization that publicly displays a seal, trustmark or other symbol indicating its participation in the CBPR or PRP Systems, or causes its name to appear on a list of recognized APEC Accountability Agents, is making an enforceable representation that it complies with the requirements applicable to a recognized APEC Accountability Agent.

If an APEC-recognized Accountability Agent subject to the jurisdiction of the FTC fails to comply with any of these requirements, its representations of compliance may constitute unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC has broad authority to take action against unfair and deceptive acts and practices.

Furthermore, if an APEC-recognized Accountability Agent authorizes the use of its certification mark, 15 U.S.C. § 1127, to convey compliance with the CBPR or PRP program requirements, under Section 14(5) of the Lanham Act, 15 U.S.C. § 1064(5), the U.S. Patent and Trademark Office may cancel the certification mark if the Accountability Agent (a) does not control, or is not able legitimately to exercise control over, the use of such mark, including by failing to monitor the activities of those who use the mark, (b) engages in the production or marketing of any goods or services to which the certification mark is applied, (c) permits the use of the certification mark for purposes other than to certify, or (d) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

The JOP has confirmed that TrustArc is subject to the regulatory oversight and enforcement

authority of the FTC since it is a Delaware-based for-profit entity.³ The JOP has further confirmed that the FTC is a participant in the APEC CPEA and that the United States is a recognized participant in the APEC CBPR and PRP System. TrustArc has confirmed that it will apply in the United States for CBPR and PRP trademarks for use by participant organizations, and therefore is subject to the U.S. Patent and Trademark Office's authority over use of the trademarks. TrustArc agrees that should it receive APEC renewal of its recognition, it will publicly indicate its participation in the CBPR and PRP Systems, including allowing its name to appear on a list of recognized APEC Accountability Agents. TrustArc publicly indicates its participation in the CBPR and PRP Systems including by allowing its name to appear on a list of recognized APEC Accountability Agents. TrustArc agrees to continue to post all CBPR and PRP-certified companies online (made available at <https://trustarc.com/consumer-information/trusted-directory/>). The JOP has verified that TrustArc has completed and signed the *Accountability Agent APEC Recognition Application* for both the CBPR and PRP Systems.

³ Registered as "TrustArc, Inc.", file number 4564885, at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>, accessed on April 26, 2024

II. RECOGNITION CRITERIA

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

Conflicts of Interest (Recognition Criteria 1-3)

Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent Application for APEC Recognition for the CBPR and PRP Systems have been met and submit all applicable written policies and documentation.

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 Application for APEC Recognition for the CBPR and PRP Systems.

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 TrustArc meets Recognition Criteria 1-3.

Discussion

TrustArc has confirmed that non-executive members of TrustArc's Board of Directors do not have day-to-day operational responsibilities. In point of fact, corporate governance requirements in the United States significantly restrict a non-executive member of a firm's Board of Director's ability to influence day-to-day management of a corporation.

In addition, TrustArc has provided the JOP its conflicts of interest policy (CP4: Conflicts of Interest, included as part of TrustArc's Renewal Application) for Board Members, and staff, which set forth mechanisms to segregate business operations from the certification mechanism, satisfying the CBPR System's conflict of interest requirements. TrustArc's internal policies provide express guidance on Director recusal procedures as well as penalties for non-compliance. Lastly, the JOP has also confirmed that TrustArc's conflicts of interest policy states that TrustArc has mechanisms in place for mandatory publication of case reports in certain circumstances. The JOP is satisfied that TrustArc has appropriate safeguards in place for employees and officers to avoid conflicts of interest.

TrustArc provides technical, certification and consulting services to clients. TrustArc has informed the JOP of its documented internal policies to avoid potential conflicts of interest between its consulting, technical service and certification activities.

Copies of the current versions of TrustArc's Conflict of Interest policies were provided to the JOP for the purposes of this report. Those CBPR and/or PRP clients that use any of TrustArc's consulting services must work with a member of the Consulting Department staff. CBPR and/or PRP- certified clients or CBPR and/or PRP applicants that use any of TrustArc's technical services independent of the CBPR and/or PRP certification process will work with a member of the Technical Account Management staff.

TrustArc has consented to notify the Joint Oversight Panel in the event that a CBPR and/or PRP- certified company makes use of (1) any consulting services or (2) technical services not related to its CBPR and/or PRP certification. TrustArc will also notify the Joint Oversight Panel when a client that had previously made use of (1) any consulting services or (2) technical services not related to its CBPR and/or PRP certification becomes CBPR and/or PRP certified. In each instance TrustArc will provide the Joint Oversight Panel with a copy of the relevant conflict of interest policy in demonstration of compliance with Accountability Agent Recognition criteria.

TrustArc's internal safeguards include documented internal policies (CP4: Conflicts of Interest, included as part of TrustArc's Renewal Application) to avoid potential conflicts of interest involving members of its Board of Directors and between its technical services, consulting, and certification activities. In addition, TrustArc's Board of Directors, certification team, technical services team and its consulting staff have been trained on these conflict-of-interest policies.

The JOP is satisfied that TrustArc has in place appropriate conflict of interest policies and has received numerous notifications of consulting or technical services from TrustArc throughout its multi-year period of recognition as an Accountability Agent, pursuant to its commitments under recognition.

Program Requirements (Recognition Criterion 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 Application for APEC Recognition for the CBPR and PRP Systems to map its existing intake procedures program requirements.

Recommendation

The JOP is satisfied that TrustArc meets Recognition Criterion 4.

Discussion

The JOP has confirmed that TrustArc meets this requirement and uses a substantially similar intake form to the APEC CBPR System Intake Questionnaire for their existing intake procedures program. In addition, TrustArc has made information on its CBPR and PRP certification requirements available on its public website:

<https://trustarc.com/products/assurance-certifications/apec-cbpr-prp/>. TrustArc has also made

available its governance standards⁴ to further demonstrate compliance with its assessment process.

Certification Process (Recognition Criterion 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 Application for APEC Recognition for the CBPR and PRP Systems to map its existing intake procedures to APEC CBPR and PRP program requirements have been met.

Recommendation

The JOP is satisfied that TrustArc meets Recognition Criterion 5.

Discussion

The JOP has confirmed that TrustArc has in place a comprehensive certification process to review an applicant organization's policies and practices with respect to the applicant's participation in the CBPR and PRP systems and to verify its compliance with the respective Accountability Agent's Program Requirements.

The JOP has also confirmed that TrustArc has in place a combination of three different methodologies to conduct the privacy certification review: (1) a manual evaluation of the program applicant's practices, (2) the program applicant's own attestations provided during the interview and through responses to the APEC CBPR System Intake Questionnaire and interviews, and (3) ongoing monitoring through TrustArc's proprietary technology and tools. TrustArc has indicated that it examines how the program applicant collects, uses and shares personal data; and that it also identifies the program applicant's third party, data-sharing relationships.

The five steps of TrustArc certification which the JOP has concluded meet the requirements as identified in 5 (a)-(d) of Annex A of the Accountability Agent Application for APEC recognition, include the following:

1. Analyze: TrustArc performs the initial assessment of compliance
2. Advise: TrustArc provides a comprehensive report to the program applicant outlining its findings regarding compliance with TrustArc's APEC Privacy Program Requirements.⁵
3. Remedy: TrustArc verifies that the required changes provided in the comprehensive report have been properly implemented.
4. Award: TrustArc has certified that the applicant is in compliance with the APEC Privacy Program Requirements.
5. Monitor: TrustArc verifies ongoing compliance with Program Requirements.

⁴ TrustArc's governance standards are available at <https://trustarc.com/wp-content/uploads/2024/02/Assurance-Program-Governance-10202023.pdf>

⁵ TrustArc has included an example of their APEC CBPR Certification Final Report as part of their Renewal Application used during the Advice portion of the certification process.

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

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) in the Accountability Agent Application for APEC Recognition for CBPR and PRP Systems.

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) in the Accountability Agent Application for APEC Recognition for the CBPR and PRP Systems.

Recommendation

The JOP is satisfied that TrustArc meets Recognition Criteria 6, 7.

Discussion

The JOP has confirmed that TrustArc has in place written procedures to ensure the integrity of the certification process described above. In its application, TrustArc described the mechanisms it uses to ensure the integrity of the certification process and to monitor the Participant's compliance with the Program Requirements as described in 5(a)-(d) of the Accountability Agent Application for APEC recognition. Once a Participant completes the initial certification process as defined in requirements 5 (a)-(d) of the Accountability Agent Application for APEC recognition, TrustArc uses a combination of approaches to ensure that compliance with TrustArc's APEC Privacy Program Requirements is consistently and continually maintained.

Unlike an audit – which only captures compliance at a single point in time – the JOP has confirmed that TrustArc certification involves ongoing monitoring using a combination of inquiries/reviews and technological tools. As TrustArc states in its re-certification application, within six months of a participant's initial certification or certification renewal, TrustArc's Quality Improvement Team (QI Team) conducts a check to verify that the privacy notice approved and certified by TrustArc is the one that is available on the Participant's website. Additionally, TrustArc's QI Team verifies that the seal is implemented properly, and displayed on approved and certified privacy notices. If TrustArc finds that the Participant has failed to post the approved privacy notice or unauthorized use of the TrustArc APEC Privacy or APEC Processor Seal, the Participant is notified of the issues and given thirty (30) business days to make the required corrections.

TrustArc's Compliance Team also monitors both privacy-related disputes received through TrustArc's Dispute Resolution Mechanism and developments in the press to proactively identify potential issues pertaining to existing TrustArc Participants. Examples stated by TrustArc include press coverage of a data security breach, or a news article regarding the data use or sharing practices. Responses to issues depend on the circumstance. For instance, in the case of a security breach, TrustArc may reach out to the Participant, whereas in the case of a data use or sharing issue, TrustArc may research the issue first before determining if direct contact with the Participant is necessary.

The JOP has confirmed that TrustArc has in place a review process to investigate a suspected breach of the program requirements described in Criteria 7 of Annex A of the *Accountability Agent*

Application for APEC Recognition for the CBPR and PRP Systems. TrustArc has indicated that it may initiate an internal compliance investigation based on results of its own monitoring, on information contained in a consumer complaint, news or press reports, regulator inquiry, or reports from other credible sources. This process assists in the verification of compliance or non-compliance with the program requirements.

Where non-compliance with any of the program requirements is found, TrustArc will investigate the compliance issue, notify the Participant, outline the corrections necessary and provide a reasonable timeframe for the Participant to make such changes, during which time, TrustArc will work with the Participant to ensure the necessary changes are made.

The JOP has confirmed that the three possible outcomes of a TrustArc investigation are as follows:

1. An agreement between TrustArc and the Participant over the privacy complaint resulting in Participant resolution that addresses the concern or request. TrustArc provides a reasonable timeframe to complete the required changes based on the risk and level of non-compliance.
2. A disagreement triggering a notice of formal enforcement, resulting in the Participant's suspension or notice of intent to terminate for cause if the matter is not cured.
3. A failure to implement the required cure resulting in the Participant's termination from TrustArc's program and, in extreme cases, publication and/or referral to the appropriate authority.

Further, TrustArc confirmed that, where the Participant is found to have displayed the TRUSTe seal with respect to matters not within the scope of its certification, the Participant must promptly remove the seal from that property or face automatic suspension until the seal is removed.

Re-Certification and Annual Attestation (Recognition Criterion 8)

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

Recommendation

The JOP is satisfied that TrustArc meets Recognition Criterion 8.

Discussion

The JOP has confirmed that TrustArc investigates, at least annually, whether its Participants are meeting and/or exceeding APEC CBPR and PRP Program Requirements through a re-certification process. TrustArc has indicated that if a Participant notifies TrustArc of a change or TrustArc detects a change outside the annual re-certification cycle, the change will be verified by TrustArc immediately, regardless of whether it is time for the Participant's annual re-certification or not.

Details of the re-certification process and annual attestation are described below.

1. *Analyze:* TrustArc performs an assessment of compliance.
2. *Advise:* TrustArc provides a comprehensive report to the Participant outlining its findings

- regarding compliance with APEC CBPR and/or PRP Privacy Program Requirements.
3. *Remedy*: TrustArc verifies that the required changes outlined in the comprehensive report have been properly implemented.
 4. *Notify*: TrustArc notifies Participant that it is in compliance with the relevant APEC CBPR Program Requirements.

The JOP has confirmed that the “Analyze, Advise, Remedy, Notify” procedures comply with all requirements under APEC recognition 8 (a) – (d). The JOP has confirmed that TrustArc conducts annual re-certification of CBPR-certified companies according to the re-certification process since APEC’s 2013 recognition of TrustArc as an Accountability Agent.

Dispute Resolution Process (Recognition Criteria 9, 10)

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.

Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) and 10 (a) – (d) of Annex A in the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems, 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 TrustArc meets Recognition Criteria 9, 10.

Discussion

The JOP has confirmed that TrustArc has an existing in-house Feedback and Dispute Resolution System⁸ and does not contract out this service to a third party. TrustArc’s dispute resolution process is a mechanism to receive and investigate privacy-related complaints about Participants and to resolve these disputes between complainants and Participants. TrustArc’s dispute resolution process begins with a consumer complaint filed with TrustArc against a TRUSTe program Participant. Within ten (10) business days, TrustArc reviews the complaint to determine if it is relevant and falls under the scope of the Program Requirements.

This dispute resolution process is described in detail below:

1. *Receiving a Complaint*: The TrustArc Feedback and Resolution System’s process begins with a consumer complaint filed against a TrustArc program Participant either with the company, or with TrustArc. After TrustArc receives a complaint, it initiates an investigation. A TrustArc investigation may also be initiated after a TrustArc review, a media report, regulator inquiry or information obtained through other credible sources.

TrustArc then reviews the complaint to determine if the complaint is relevant and falls under the scope of the CBPR Program Requirements. This can take up to 10 business days.

2. *Responding to and Investigating a Complaint:* The consumer (complainant) receives TrustArc's initial response within 10 business days of filing a complaint, TrustArc's published time frame.⁶ TrustArc's system notifies the complainant of the response by the Participant, if any. The complainant and the Participant may correspond directly, with TrustArc copied, such as in the event that the Participant asks the complainant for further information. The complainant and Participant are copied when TrustArc sends its determination. The nature and duration of the investigation needed can vary widely. TrustArc reports that it quickly checks all issues that can be immediately verified but ultimate resolution of the complaint depends on the nature of the issue.
3. *Resolving a Complaint:* After the complaint has been investigated, the Participant ordinarily has 10 business days to provide a written response for the complainant. For more urgent issues, such as security vulnerabilities, TrustArc escalates to the Participant via phone as well and generally expect responses much sooner, especially if we are able to verify the problem.
4. *Written Notice of Complaint Resolution:* Once the complaint is resolved, TrustArc will send an email notice to both the complainant and, if participating, the Participant, notifying them of closure of the complaint.
5. *Process for Obtaining Consent:* TrustArc's Feedback and Resolution form asks the complainant to provide consent before TrustArc shares their personal information with the program Participant the complainant is filing a dispute about. All personal information collected during the request for assistance is collected in accordance with the TrustArc Privacy Notice (available at <https://www.trustarc.com/privacy-policy/>). Below is a screenshot from TrustArc's Feedback and Resolution Form illustrating TrustArc's online consent mechanism. Note, the complainant must indicate a preference (around whether they want their complaint shared) prior to submitting their complaint.
6. *Reporting Complaint Statistics and Release of Case Notes:* TrustArc has committed to reporting complaint statistics as well as releasing case notes in connection with its recognition as an Accountability Agent in the CBPR and PRP Systems. TrustArc has successfully met the obligations to report complaint statistics and anonymized case notes on complaints as part of its ongoing Accountability Agent recognition.

To handle complaints under the PRP System, TrustArc verifies that PRP Participants have a documented process in place for forwarding complaints to the appropriate controller. Additionally, under section IV of TrustArc's Annual Dispute Resolution Report⁷, TrustArc describes how it meets the requirements of PRP 10(c)(i)-(iii). The dispute resolution process for complaints, including those complaints from individuals concerning the processing of his/her personal information, begins with a complaint filed by an individual against an APEC-PRP certified company (Participant) either with the company, or with TrustArc. After TrustArc

⁶ The published time frame can be found on TrustArc's Feedback and Resolution Form at <https://feedback-form.TrustArc.com/watchdog/request>

⁷ TrustArc's 2024 Annual Dispute Resolution Report can be found on CBPRs.org at <http://cbprs.org/documents/> under the 2024 tab.

receives a complaint, they initiate an investigation starting with a review of the complaint to determine if the complaint is relevant and falls under the scope of the APEC-PRP Program Requirements. This initial review can take up to 10 business days. The individual (complainant) receives an initial response from TRUSTe within 10 business days.

TrustArc also posts information about its Dispute Resolution process on its website at <https://trustarc.com/dispute-resolution-faqs/>. Finally, TrustArc makes publicly available statistics about the types of complaints received and how these complaints were resolved.⁸

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

Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.

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.

Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A in the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.

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].

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 TrustArc meets Recognition Criteria 11-15.

Discussion

The JOP has confirmed that TrustArc has a mechanism in place to enforce its program requirements, has established procedures to remedy non-compliance, impose penalties and notify public authorities, where appropriate. The following is an overview of these procedures as provided in TrustArc's application for recognition and confirmed by the JOP:

Authority to Enforce Program Requirements: TrustArc has the authority to enforce its program requirements (including its Governance Standards, included in its Renewal Application) against

⁸ The complaint statistics for the previous reporting period (March 1, 2023-February 29, 2024, can be found on CBPRs.org at <http://cbprs.org/documents/> under the 2024 tab. The report for the previous reporting period can be found under the 2023 tab.

Participants through its Assurance Services Agreement (“ASA”), or a substantially similar services agreement, which TrustArc requires all clients to execute before beginning the engagement. This is reflected in TrustArc’s ASA, section 3.1.1: “If participating in a [TrustArc] Assurance Program, Customer shall fully comply with the applicable Assurance Standards, including, but not limited to any annual (or other) certification requirements contained in the applicable Assurance Standards.”

Process of Notifying Participant of Non-Compliance and Remedy: Once TrustArc identifies that a Participant is out of compliance with the relevant program requirements, either through TrustArc’s re-certification process, ongoing monitoring, or dispute resolution process, the Participant will be contacted immediately by TrustArc. At that point, TrustArc would outline the corrections necessary to come back into compliance with relevant requirements and provide a reasonable timeframe for the Participant to make the corrections.

TrustArc will continue to work with the Participant to come back into compliance. If the Participant fails to come back into compliance with the relevant program requirements, TrustArc will take steps to either temporarily remove the seal from the Participant’s website or terminate the Participant’s participation in the program.

Remedy of Non-Compliance within a Specified Timeframe: The JOP has confirmed that TrustArc has a process in place to suspend a participant if it does not remedy non-compliance within a specific time period. This process is described in TrustArc’s Assurance Program Governance Standards (included in TrustArc’s Renewal Application) – Section K, Certification Status excerpted below:

1. In the event TrustArc determines that Participant’s compliance with the Assessment Criteria of the program(s) the Participant is participating in has lapsed, TrustArc will provide notice and, if not resolved within a reasonable timeframe as determined by TrustArc, discontinue Participant’s certification.
2. TrustArc may reinstate the Participant’s certification if the Participant demonstrates to TrustArc and TrustArc has verified that all the required changes have been completed.
3. Upon notice to the Participant, TrustArc may discontinue immediately the Participant’s certification if Participant is found in material breach of the Assurance Program Governance Standards or Assessment Criteria of the program(s) in which the Participant is participating. Material breaches include but are not limited to:
 - a. Participant’s material failure (e.g., unauthorized use of the TrustArc seal, failure to complete Annual Review by the anniversary of the prior year certification date) to adhere to the Assessment Criteria of the program(s) in which they are participating;
 - b. Participant’s material failure to permit or cooperate with a TrustArc investigation or review of Participant’s policies or practices pursuant to the Assurance Program Governance policies, rules, and guidelines;
 - c. Participant’s material failure to cooperate with TrustArc regarding an audit, privacy-related complaint, or the compliance monitoring activities of TrustArc; or

- d. Any deceptive trade practices by the Participant.
4. If TrustArc discovers unauthorized use of the TrustArc seal, TrustArc will notify the Participant and discontinue immediately the Participant's certification.

Referral to Relevant Privacy Authority: The JOP has confirmed with TrustArc that in the event a client does not cure a non-compliance issue and is terminated, TrustArc evaluates factors such as whether the violation was egregious and intentional, or whether impact was de minimis.

The JOP has further confirmed that TrustArc's may refer a non-compliance issue to the FTC or another privacy enforcement authority, contingent on whether or not the actions of the Participant rise to a level which would trigger jurisdiction by the privacy enforcement authority. TrustArc does not refer Participants to privacy enforcement authorities where such authority would be unable to take action against the referred client.

Other penalties – including monetary penalties – as deemed appropriate by the Accountability Agent: TrustArc has informed the JOP of its policies and procedures for referral to the appropriate public authority or enforcement entity. TrustArc does not have authority by contract to impose monetary penalties. TrustArc indicated to the JOP its belief that no commercial entity would enter into a contract with TrustArc if TrustArc were to have a contractual authority to impose monetary penalties. The JOP accepts the explanation of TrustArc as common understanding for its marketplace, services, and location.

Response to Requests from Enforcement Entities: The JOP has confirmed that where possible TrustArc will respond to requests from enforcement authorities in APEC Member Economies that reasonably relate to the CBPR-related activities of TrustArc. In its renewal application, TrustArc provides CP3.2 Privacy Communications and Individual Rights Management Process (included as part of TrustArc's Renewal Application), which states that in the event that it receives a communication from regulators, responses will be handled through its Office of General Counsel.⁹

⁹ Communications from regulatory bodies may be sent to any of the TrustArc appointed representatives, <https://trustarc.com/trustarc-representatives/>.

CASE NOTES AND STATISTICS

Will the Applicant provide relevant information on case notes and statistics as outlined in the Accountability Agent APEC Recognition Applications?

Recommendation

The JOP is satisfied that TrustArc meets the case notes and statistics requirements as stipulated in the *Accountability Agent APEC Recognition Applications*.

Discussion

For the CBPR System, the *Accountability Agent Recognition Criteria* 10 (g) & (h) require Accountability Agents to have a process for making publicly available statistics on the types of complaints and the outcomes of such complaints (see Annex E of the *Accountability Agent APEC Recognition Application*), and a process for releasing, in anonymized form, case notes on a selection of resolved CBPR-related complaints illustrating typical or significant interpretations and notable outcomes (see Annex D of the *Accountability Agent APEC Recognition Application*).

The JOP has confirmed that TrustArc submitted case notes and statistics for the period of March 1, 2023, through February 29, 2024, on March 28, 2024. These case notes have been made publicly available on www.cbprs.org, in accordance with the *Accountability Agent Recognition Criteria* 10 (g) & (h).

SIGNATURE AND CONTACT INFORMATION

By signing this document, the signing party attests to the truth of the answers given.


Val Ilchenko (Aug 14, 2024 12:04 EDT)

Aug 14, 2024

[Signature of person who has authority

[Date]

to commit party to the agreement]

[Typed name]: Val Ilchenko

[Typed title]: General Counsel and Chief Privacy Officer

[Typed name of organization]: TrustArc, Inc

[Address of organization]: 2121 N. California Blvd., Suite 290, Walnut Creek, CA 94596,
USA

[Email address]: vilchenko@trustarc.com

[Telephone number]: 415-520-3400

APEC recognition is limited to two years from the date of recognition. One month prior to the anniversary of the date of recognition, 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.

TrustArc JOP Recommendation Report_07.26.24_Cleared.docx (1)

Final Audit Report

2024-08-14

Created:	2024-08-13
By:	Joanne Furtsch (jfurtsch@trustarc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAOa9qkwuVn9lwvR8jusGYLNfj7VR5nmfO

"TrustArc JOP Recommendation Report_07.26.24_Cleared.docx (1)" History

-  Document created by Joanne Furtsch (jfurtsch@trustarc.com)
2024-08-13 - 11:16:31 PM GMT
-  Document emailed to Val Ilchenko (Vilchenko@trustarc.com) for signature
2024-08-13 - 11:17:37 PM GMT
-  Email viewed by Val Ilchenko (Vilchenko@trustarc.com)
2024-08-14 - 4:04:41 PM GMT
-  Document e-signed by Val Ilchenko (Vilchenko@trustarc.com)
Signature Date: 2024-08-14 - 4:04:50 PM GMT - Time Source: server
-  Agreement completed.
2024-08-14 - 4:04:50 PM GMT