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General Comment

It is commendable that the Department of Energy is attempting to implement a uniform set of best practices in an environment where new legislation or regulation regarding privacy may be difficult. Nevertheless, it should be noted when discussing any such attempt that voluntary codes are useless when they are not commonly adopted and adhered to.

If they are not to be held accountable by a regulator, the voluntary code of conduct should include means by which companies hold themselves accountable. Otherwise, a company otherwise accepting of the voluntary code may reject it when it becomes convenient to do so, defeating the purpose. The current requirements under concept 5, "self enforcement management and redress," are wise. I suggest that additionally, companies claiming compliance with the code of conduct should publish the customer concerns it has received and how it has resolved them (in a manner that does not infringe upon the customers' privacy, of course). This makes the

self-enforcement mechanism more transparent.

Additionally, there are carved out exceptions to the restriction on customer data disclosure, notably:

"Consent Not Required: Prior customer consent is not required to disclose Customer Data in the case of:

[...]

(2) Law enforcement or other legal officials to whom disclosure is authorized or required by law;

(3) As directed by Federal or State law, or at the direction of appropriate regulatory authority; or

[...]"

The code of conduct should explicitly take into account the possibility that requests from law enforcement or other government entities may not be legally binding, even when they are claimed to be. A company claiming compliance with the code of conduct should refuse disclosure requests from the government when it has reason to believe there is no legal requirement for the disclosure. In that event, it should disclose customer data only with the customer's consent, as usual, unless the matter is litigated or there is otherwise a legal finding that the disclosure is in fact mandatory. Further increasing transparency, companies should publish statistics and summaries of all requests for customer data without the customer's consent, in a manner analogous to the transparency reports regarding Digital Millennium Copyright Act claims published by e.g., Google or the Wikimedia Foundation.

Transparency is always of great importance, but especially so when it comes to self-enforcement, because customers are in that case the only party capable of taking corrective action when the enforcement is lacking.