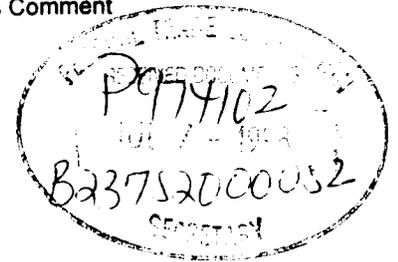


From: "Cameron King" <Cameron_King@countrywide.com>
To: HQ.SAT4(ELECMEDIA)
Date: 7/7/98 4:58pm
Subject: Interpretation of Rules and Guidelines for Electronic Media -Countrywide's Comment

JUL 7 1998

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Secretary
Federal Trade Commission
Room H-159
Sixth Street and Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Interpretation of Rules and Guides for Electronic Media?Comment,
FTC File No. P974102

Dear Mr. Secretary:

Attached to this e-mail, we have provided some comments regarding the Commission's proposal to issue a policy statement regarding rules and guides on internet commerce. Due to the nature of the Commission's effort, we felt it appropriate to deliver the document via e-mail. If for any reason you have problems 'detaching' the document, please e-mail me at Cameron_King@Countrywide.com or call me at (626) 584-2355.

We thank the commission for this opportunity to respond and commend its initiative to proactively address the issues associated with this new channel.
(See attached file: FTC Electronic Media Comment final.doc)

July 8, 1998

VIA EMAIL @ "ElecMedia@ftc.gov"

Secretary
Federal Trade Commission
Room H-159
Sixth Street and Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Interpretation of Rules and Guides for Electronic Media—Comment, FTC
File No. P974102

Dear Mr. Secretary:

Countrywide Home Loans, Inc. ("Countrywide") is pleased to submit our comments in connection with the Commission's proposal to issue a policy statement in the near future regarding the applicability of its rules and guides to electronic media, including e-mail, CD-ROMs, and the Internet.¹ We commend the Commission for soliciting input prior to publication of such a policy statement. Countrywide believes that it is critical to develop rules that protect consumer choice and privacy while at the same time realizing the free market benefits that will flow from maximizing free and robust distribution of information over electronic media. Unduly broad or restrictive electronic media policies will certainly restrict the flow of information to consumers interested to use in gathering information as a tool in making intelligent financial decisions. Accordingly, Countrywide supports a self-regulatory response to consumers' online privacy concerns, based on companies dealing with consumers in an honest and trustworthy manner.

Countrywide has pioneered the use of innovative technology to provide low cost, high quality home loans and related financial services to our customers. We are already taking loan applications over the Internet, and encountering many of the challenges and problems discussed in the Commission's Report to Congress on Privacy Online. Some issues are new while some are merely technological repetitions of issues faced long ago in the mortgage industry.

Countrywide just recently commented to the Board of Governors of the Federal Reserve System ("Board") on the proposal to allow creditors to provide online disclosures to consumers. We would be glad to provide a copy. Many of those comments

¹ Due to the nature of our business, Countrywide has not addressed the children's issues that the Commission is so focused on.

and that rule making process are pertinent to the Commission's proposal to assert control over and make rules for electronic media. For that reason, Countrywide feels uniquely positioned to offer comments and suggestions.

Electronic commerce in the mortgage banking industry is still in its infancy, and the pace of technological innovation is ever increasing. None of us can predict what technology will be available in the future or what uses will be found for current technology. Because of this uncertainty, we applaud the Commission's efforts to craft this proposal broadly and openly. It is apparent that a great deal of effort will be needed to be specific enough to provide adequate guidance without being so restrictive as to inhibit new or creative methods of information exchange and compliance.

The Commission's Report to Congress ("Report") discussed the following mortgage industry Web site:

A mortgage company operates an online pre-qualification service for home loans. The online application form requires that each potential borrower provide his or her name, Social Security number, home and business telephone numbers, e-mail address, previous address, type of loan sought, current and former employer's name and address, length of employment, income, sources of funds to be applied toward closing, and approximate total in savings. The online form also requires the borrower to provide information about his or her credit history, including credit card, car loans, child support and other indebtedness, and to state whether he or she has ever filed for bankruptcy. The application form requires the borrower to agree that the mortgage company may disclose his or her "credit experiences" to third parties, but the Web site says nothing else about how the mortgage company might use all of the information provided or whether that information will be made available to third parties.

The very process of collecting this detailed information for a pre-qualification calculator serves as notice to the consumer that the mortgage company will use all of the information provided to analyze the customer's prospects for obtaining a home loan. We concur that mortgage companies should advise consumers whether that information will be made available to third parties. The home loan pre-qualification example reiterates the need for consideration of the many issues raised in this new environment.

However, with respect to home loans and related financial services, it must be kept in mind that various regulatory regimes and mortgage banking regulations already cover such transactions. It is important both that new electronic media solutions are fashioned for old problems and that lessons learned from old problems are remembered in dealing with new issues. These solutions should be predominantly fashioned through self-regulation, relying on existing laws and regulations not just crafting new ones.

Clear and Conspicuous Disclosures in Electronic Media

Countrywide agrees that a consumer should be given comprehensive and understandable disclosures to prevent deception. Countrywide believes that online disclosures in advertising, in loan/transactions applications, and in consumer financial

educational tools must be considered in a variety of contexts. In the mortgage banking online environment, it is important to distinguish between what a sophisticated consumer wants and what is needed or adequate for a first-time home buyer. Making readily noticeable, readable, and understandable online disclosures, whether information policy statements or other transactional disclosures, is particularly challenging and may involve others beyond the creditor's control. Countrywide requests that the Commission defer with respect to the mortgage banking industry to the Board's determination of what disclosures are appropriate and when. In any event, we believe it would provide greater flexibility to focus on requiring such minimum standards so that the consumer's attention is deliberately drawn to the means of access to the disclosure and the access to the disclosure is user-friendly, rather than specifying disclosure formats and placements.

Unavoidable Disclosures

Countrywide agrees with the Commission that a disclosure must be considered in the context of all elements of an advertisement. For that reason, Countrywide is concerned by the Commission's broad generalization that "consumers viewing an advertisement should necessarily be exposed to the disclosure in the course of the communication without having to take affirmative action, such as scrolling down a page, clicking on a link to other pages, activating a 'pop up,' or entering a search term to view the disclosure." We believe that making disclosures "unavoidable" is inappropriate in many contexts. The goal should be making disclosures readily-available and consumer-friendly, not omnipresent.

Access to Disclosures

Countrywide agrees that consumers should not be blocked from returning to a hyperlink to a disclosure. Countrywide is unsure what the Commission means when it says that "disclosures should remain accessible by consumers at all times during the communication." If information is posted on a creditor's Web site, then the information could be considered to be given immediately, provided there is clear direction to the consumer about where to go to find the information. For example, a prominent message could say, "Click here for important information about your rights."

Proximity and Placement

Countrywide agrees with the Commission that the effectiveness of a disclosure is ordinarily enhanced by its proximity to the representation made. Countrywide is troubled by the Commission's desire to see disclosures on the same screen as a "triggering representation." Our experience on the Internet has shown that different customers want different levels of detail about particular aspects of the home loan process. As a result, it is not always practical to put disclosures on the same screen. Disclosures must be fairly and reasonably balanced with functionality of the site for the educated consumers that use it. Unlike Countrywide's more traditional media advertising, the Internet site is an interactive tool used by customers in many different ways.

Countrywide's experience is that framing causes more confusion to the consumer and that well-defined navigation or pathing is easier and more understandable for most consumers.

Prominence & Non-Distracting Factors

Electronic media certainly afford new opportunities to add or detract from a consumer's understanding of home loans and related financial services. Countrywide generally agrees that large, colorful disclosures displayed for long periods are one effective method of making disclosures online. Countrywide believes that new display technologies (such as scrolling banners, flashing screens, and animated graphics or "GIFs") can be used legitimately, as with other more traditional media.

Repetition

The Commission is right to point out that advertisements on the Internet can be extremely lengthy. The advertisements can also be extremely short. Consumers use our Web site in many different ways. While online mortgage banking is in its infancy, many traditional methods of disclosure will serve both as a guide for what is appropriate and, even though not always necessary, as a means of repetition of disclosures. For that reason, self-regulation is the most effective method for dealing with consumers in an honest and trustworthy manner and providing consumers what they want in a Web site for home loans and related financial services.

Audio and Visual Presentation

Countrywide believes that the Commission should allow for greater flexibility in presentation of disclosures. Countrywide agrees that display of disclosures visually and in audio are two effective means of making disclosures to consumers. However, given that customers' computer equipment varies greatly, it would be inappropriate and costly for the Commission to mandate use of both techniques.

Opt-in Versus Opt-out Disclosures

The Commission's Report expressed concern over guidelines that speak of choice in terms of opt-out options for the consumer rather than adopting an opt-in regime. Specifically, the Report states:

In the online environment, choice easily can be exercised by simply clicking a box on the computer screen that indicates a user's decision with respect to the use and/or dissemination of the information being collected. The online environment also presents new possibilities to move beyond the opt-in/opt-out paradigm. For example, consumers could be required to specify their preferences regarding information use before entering a Web site, thus effectively eliminating any need for default rules.

Countrywide feels strongly that the opt-out paradigm has not lost its place simply because of technological innovations. Moreover, Congress recently enacted new Fair Credit Reporting Act legislation that preempted state law. T

That legislation must be given an opportunity to take full hold in the mortgage banking industry. An opt-in requirement is exactly the sort of unduly broad or restrictive electronic media policy that would curb the flow of information to consumers interested in tools to make intelligent financial decisions.

Countrywide believes that choice in terms of opt-out disclosures is paramount to free and robust exchange of information on the Internet. Online customers want smart, fast, reliable choices, not cumbersome navigation or pathing. Countrywide believes that choice means giving consumers options, but with respect to much more than how any personal information collected from them may be used. Countrywide agrees that choice can also involve more than a binary yes/no option. Entities like Countrywide can, and do, allow consumers to tailor the nature of the information they reveal and the uses to which it will be put. Thus, for example, Countrywide developed systems to allow consumers to exercise choice more easily as to whether they wish to be on a company's general internal mailing list or a marketing list sold to third parties.

Self-Regulation Will Prove More Effective Than Private Remedies

Countrywide agrees that the core principles of privacy protection can only be effective if there is a mechanism in place to enforce them. Absent an enforcement and redress mechanism, a fair information practice code is merely suggestive rather than prescriptive, and does not ensure compliance with core fair information practice principles. Among the alternative enforcement approaches are industry self-regulation; legislation that would create private remedies for consumers; and/or regulatory schemes enforceable through civil and criminal sanctions.

Countrywide agrees completely that appropriate means of individual redress include, at a minimum, institutional mechanisms to ensure that consumers have a simple and effective way to have their concerns addressed. Thus, a self-regulatory system should provide a means to investigate complaints from individual consumers and ensure that consumers are aware of how to access such a system.

Countrywide does not believe that a new statutory scheme is needed to create private rights of action for consumers harmed by an entity's unfair information practices. Good companies already have strong incentives to adopt and implement fair information practices and ensure compensation for individuals harmed by inadvertent misuse of personal information. Our experience indicates that customers are less likely to use the Web sites that are non-responsive to privacy and security concerns or that are not truthful in portrayal of products and services. What is needed is fair and easy methods for resolution of errors, not more legislation that spurs class actions by providing for compensatory, liquidated and/or punitive damages.

Expansion of "Direct Mail" to Cover E-mail

Countrywide believes that it is appropriate for the Commission to expand the definition of direct mail to include electronic equivalents of direct mail, such as e-mail. The Commission proposes to define "direct mail" to include those communications that are directed to particular individuals, such as facsimiles and e-mails, but not to the public at large, such as Internet bulletins. Perhaps certain aspects of the Telemarketing Sales Rule should apply in that limited context. However, each requirement would have to be specifically reviewed to determine its applicability. For example, one of the advantages of the Internet is that it allows consumers access to information twenty-four hours per day, seven days per week; thus, the timing limitations of the Telemarketing Sales Rule should not apply.

Use of Electronic Media To Comply With Affirmative Requirements

Countrywide's recent comment letter on the Board's proposal on electronic media focused in this area. Countrywide believes that the Commission should defer rule-making authority to the Board with respect to mortgage banking and related financial services. Countrywide commented to the Board that it would be appropriate for the Board to exercise its rule-making authority to establish federal preemption in this area.

General Comments on Internet Privacy Principles

Notice & Awareness of Information Practices

Countrywide agrees that consumers should be given notice of an entity's information practices before any personal information is collected. Countrywide wants consumers to make an informed decision both as to products and services and as to whether and to what extent to disclose personal information. We agree in principle that three of the core principles—choice and consent, access and participation, and enforcement and redress—are only meaningful when a consumer has notice of an entity's information policies, and his or her rights.

Countrywide's Web site already includes much of the information viewed by the Commission as essential to ensuring that consumers are properly informed, and we are focusing on improving many items:

- Countrywide believes it is evident to consumers that the Countrywide family of companies is collecting information when they visit "www.Countrywide.com." In the mortgage banking industry, the challenge comes from the barrage of companies trying to set up computer loan origination services.
- Countrywide's privacy and security policy identifies uses to which customers data will be put
- Countrywide generally identifies potential recipients of the data

- Countrywide discloses that it collects information both actively and passively
- Countrywide informs consumers that do not complete applications and other loan tools whether the provision of the requested data is voluntary or required, and the consequences of a refusal to provide the requested information
- Countrywide discloses steps taken to ensure the confidentiality, integrity and quality of the data

Countrywide agrees that, in the Internet context, notice can be accomplished by the posting of an information practice disclosure describing an entity's information practices on a company's site. However, it is important to provide flexibility to drafters in such a way that does not defeat the free flow of information. Many companies have relationships with affiliated companies and other third parties which can be beneficial to consumers, if they are made aware of cross-selling opportunities. An information practice disclosure should offer customers a choice without inducing an automatic negative reaction. Countrywide has posted such a disclosure and continues to improve the policy as comments are received from customers.

Consumer Access/Participation

Countrywide has recently added new features to its Web site to allow existing customers easier access to, and the opportunity to securely correct, certain information collected in Countrywide's databases. Countrywide is currently working on a number of other portions of its site to further enhance our customer service levels. These efforts reflect our commitment to make the home loan process consumer-friendly, which is inherent in our brand and represented in our slogan--Easy. Really.®

Data Integrity & Security

To Countrywide, the principle that data be accurate and secure is in many ways the first principle not the fourth. We have worked very hard to assure data integrity, by using only reputable sources of data and cross-referencing data against multiple sources, providing consumer access to data, and destroying untimely data or converting it to anonymous form. Countrywide believes that prevention of identity theft and fraud is the most critical protection that consumers need, even before notice and awareness.

We agree that security involves both managerial and technical measures to protect against loss and the unauthorized access, destruction, use, or disclosure of the data. Countrywide has numerous internal policies that relate to protection of consumer information, such as limits on employee access to data and security cards for access to facilities where personal information is stored. We are obligated as a matter of good business practice and by law to institute managerial measures within our organization that limit access to data and ensure that those individuals with access do not utilize the data for unauthorized purposes. We have also implemented technical security measures to prevent unauthorized access to further these obligations.

Conclusion

We thank the Commission for its effort to promote the appropriate use of technology to enable creditors to provide better customer service. We would appreciate the opportunity to discuss these proposals in greater detail. In that way, the Commission, the Board, various federal agencies that participate in the mortgage lending process, and consumers and lenders in electronic commerce can agree upon the scope and nature of regulation needed. We also would be pleased to participate in any upcoming workshops. If you have any questions or would like to set up a meeting, please feel free to contact me.

The Internet is a rapidly changing marketplace. Effective self-regulation remains desirable because it allows companies to respond quickly to technological changes and employ new technologies to better serve customers and protect consumer privacy. We believe a private-sector response to consumer concerns that incorporates widely-accepted fair information practices and provides for effective enforcement mechanisms can afford consumers adequate privacy protection. With respect to home loans and related financial services, Countrywide intends to lead the way.

Sincerely,

A handwritten signature in black ink, appearing to read "E. C. King". The signature is fluid and cursive, with a large initial "E" and a stylized "C" and "K".

Edward "Cameron" King