Logos, Links, and Lending: Towards Standardized Privacy and Use Policies for Banking Web Sites

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WALTER A. EFFROSS

I. INTRODUCTION

As an accelerating number of customers go on-line rather than stand in line, financial institutions have been quick to accommodate this new form of interaction. Indeed, according to the American Banker, over the past three years banks have moved from generally "displaying basic bank data on the Internet" on World Wide Web sites whose "clunkiness" disappoint-
ed visitors to producing more sophisticated and interactive sites that allow consumers to open accounts and pay bills through the Internet, to "evaluate their finances and determine what type of loan fits their needs," and even to complete and submit on-line applications for small-business loans or home equity loans. A number of banks actually exist only on-line, with

3. Jennifer Kingson Bloom, Bank Web Sites: From Sleek to Cute to Clunky, AM. BANKER, Mar. 28, 1996, at 24 (observing that most bank sites "post information about interest rates and product offerings for anyone with a computer and modem who cares to take a look" and that "[t]he most sophisticated Web bankers—there are only a handful—let customers check balances, apply for loans, and perform some transactions on-line." Nine months later, the same commentator reported that a survey of consumers' use of on-line banking sites revealed that "Banks have not really grasped what the Internet is . . . . One of the biggest mistakes they make is referring people on their Web sites to '800' numbers, which is one of the biggest no-nos in the business."); Jennifer Kingson Bloom, Study: Shabby Web Sites Holding Banks Back, AM. BANKER, Dec. 13, 1996, at 10.

4. SECRETARIAT ON ELECTRONIC COMMERCE, THE EMERGING DIGITAL ECONOMY 29 (1998) (indicating that although "Internet banking is still in its infancy . . . . Before the decade is out, customers are likely to be able to do most of their banking transactions on the Web."); Jennifer Kingson Bloom, Wells Customers Can Move Money Among Accounts On-Line, AM. BANKER, May 15, 1996, at 14 (noting that "[c]ustomers can move money among various accounts—including checking, savings, money market, and credit card [and] also can pay balances on credit cards and other lines of credit, or tap credit by moving funds from a credit card account to a deposit account"); Jennifer Kingson Bloom, Huntington Opens for Business on the World Wide Web, AM. BANKER, June 3, 1996, at 23 (reporting on the opening of another "one of [the] handful of banks to offer transactional services through the Internet.").

In late 1997, the American Banker noted that a small bank serving a Nebraska town of 346 people through a Web site with transactional capacity had found the cost to be "about the same as the annual salary of a bank employee." Home Banking: Small Banks Go On-Line, AM. BANKER, Dec. 1, 1997, at 34 (quoting the bank's president as saying, "We're offering the same products and services as anyone, regardless of size."). By early 1998 a survey could report that about one-third of banking institutions offered the ability to initiate transactions through a Web site. Matt Barthel, Banks' Early Lead in Transactional Web Sites May Not Hold for Long, AM. BANKER, Jan. 9, 1998, at 14 (observing that few banks conducted selling and marketing activities through their sites). Cf. Timmons, supra note 1 (noting that another survey indicated that only 20% of banks "operate Web sites used for actual business, such as rendering application decisions," rather than merely as "a tool for delivering information, such as current rates").


6. In Brief: Wells' Web Site Offers Instant Equity Loans, AM. BANKER, June 5, 1998, at 12 (reporting that "[c]ustomers who visit [Wells Fargo's] Web site, www.wellsfargo.com, can fill out applications for home equity loans and receive an answer 'within seconds' . . . . If approved, the borrower will be contacted by a loan officer within 48 hours."). But see Steven Marjanovic & Heather Timmons, One-Stop-Shopping Web Sites Prove A Hit with Mortgage Borrowers, AM. BANKER, Mar. 24, 1998, at 1 (observing that the mortgage sites "attracting the most attention are not those of banks, mortgage banks, or even brokers. They are consumer-friendly, independent entities that have combined an entrepreneurial focus on the Internet with, in a growing number of cases, strong brand identities. The names include America Online, Intuit Inc.'s Quicken brand, E-Loan, HomeShark, and GetSmart."); Brad Stone, Dial Up a Mortgage, NEWSWEEK, Oct. 26, 1998, at 84 (quoting the chief executive officer of E-
no brick-and-cement branches. Web banking may ultimately replace the specialized proprietary software, and its attendant expense and security risks, with which some customers now conduct on-line banking through direct connections to their banks' computer networks. This trend will only be speeded by regulators' current proposals to allow required disclosures by financial institutions to be made electronically rather than on paper. The commercial ecology of Web banking might be compared to that of a mall. Consumers can proceed directly within the larger building to the establishments with which they are familiar, generally, those with which they have personal experience or whose reputation they respect. Alternatively, consumers can check a mall map (or, on the Web, a "search engine")

7. THOMAS P. VARTANIAN, ROBERT H. LEDIG ET AL, 21ST CENTURY MONEY, BANKING & COMMERCE 145 (1998) (hereinafter, VARTANIAN ET AL.) (noting the granting of preliminary approval for a national bank charter by the Office of the Comptroller of the Currency in August 1997 to CompuBank, a Houston-based institution that intended to commence banking operations in February 1998); Jennifer Kingson Bloom, A Second Bank Is Launched into Cyberspace, AM. BANKER, Oct. 18, 1996 (discussing the operation of Atlanta Internet Bank, which, to demonstrate its low overhead, was "hoping to skim customers off the Internet by offering an eye-catching 7% interest rate on money market accounts"); Jennifer Kingson Bloom, A Virtual Bank Grapples With Reality, AM. BANKER, Aug. 19, 1996, at 10A (reporting on the first ten months of operation of Security First National Bank, the first depository institution to transact business only on the Internet); Jennifer Kingson Bloom, Huntington Opens For Business on World Wide Web, AM. BANKER, June 3, 1996, at 23 (reporting on the opening of "one of a handful of banks to offer transactional services through the Internet"). See generally VARTANIAN ET AL., supra, at 9 ("Utilizing the Internet as its advertising vehicle and as its principal method of serving customers, an Internet bank is fundamentally different from the de novo model that starts with a main office and seeks customers from its local community. In the new model, size and geography may become incidental rather than critical . . . . [A] geographically remote bank can operate a website that is as impressive and as user-friendly as a site maintained by a local bank.").

8. Sharon Machlis, Web Banking Fees on the Rise, COMPUTERWORLD, Aug. 10, 1998, at 37, 38 (observing that "even if banks can cut the third-party fees [to developers of standard programs like Intuit, Inc.'s Quicken and Microsoft Corp.'s Money], many large institutions prefer their own on-line services because they have control over the interface [and can add such nonstandard features as] loan applications or address changes"); Tami Luhby, Banks Keep Private Networks Alive to Serve Internet-Shy Customers, AM. BANKER, Feb. 4, 1998, at 1 (noting that "[t]he Internet momentum is unmistakable").

site\textsuperscript{10}) for a list of all merchants of a certain product, or consult a consumer guide (an "intelligent agent" site\textsuperscript{11}) for advice on where to get the best terms on a given financial product.

The merchants may advertise their products, especially by placing advertisements in the windows of other stores that consumers might visit,\textsuperscript{12} but generally do not approach consumers directly.\textsuperscript{13} They do, though, strive to make their different shops as attractive as possible, providing interactive options to augment their inventories.

The regulatory agencies, like the mall security, local police, and food inspectors, patrol the aisles, on the alert for dishonest practices by customers, as well as, by merchants. Like the merchants, the patrol officers generally do not actively provide information to shoppers, but wait to be contacted by them. However, although the security forces have their own locations in the mall, many shoppers might not know of their presence or how to find them.

In an ideal marketplace, the merchants, the consumers, and agencies would all be aware of all of the different products, prices, terms of sale and legal conditions offered by each vendor. The decentralization of the Web and the low cost of searching it ensures that, at least in this environment, there is commercial transparency: given enough time, (or, if information was changing rapidly, enough people working simultaneously) anyone could examine all of the available Web sites and compare their offerings.


\textsuperscript{12} Judd, \textit{supra} note 9, at 26 (quoting executive of on-line Security First Network Bank as stating that Internet banks are “more willing to do things on different Web sites like My Yahoo! or The Wall Street Journal or CNN or the Disney Channel”); Liz Moyer, \textit{Web Advertising Catches On, But Remains Just a Piittance}, AM. BANKER, Jan. 12, 1998, at 6 (indicating that banks are now advertising their Web sites by placing “banners” to lead consumers to these sites from publishing sites such as those of \textit{The Wall Street Journal}, the \textit{New York Times}, and \textit{Business Week}). In this regard, banks may be following the model of successful on-line merchants of books and compact disks, who offer to share with the operator of a site containing a link to their own the revenues derived from a visitor who has followed that link to their sites. See Drew Clark, \textit{Lenders Dragged and Dropped onto the Internet}, AM. BANKER, Sept. 14, 1998, at 4A (noting that “many mortgage originators [are trying to be] in as many places on the Web as possible” through affiliations with or links to other Web sites and Internet-mediated networks of lenders); Effross, \textit{supra} note 11, at 1317-18 (1998) (reviewing such arrangements).

\textsuperscript{13} See Effross, \textit{supra} note 11, at 1281 n.30 (reviewing the Internet community’s general aversion to “‘spamming,’ or sending unsolicited commercial messages indiscriminately to a large number of unrelated [on-line] newsgroups or individual electronic mail addresses”).
At its extreme, commercial transparency leads to *complete commodification*, in which a Web user can, by means of a search engine, an “electronic agent,” or an exhaustive search through individual sites, conduct a comparison of all of the available products, including financial products and loans, to find the optimum package of product, pricing, and terms for her purposes. Clearly, this type of comparison is most useful in the case of standardized/fungible products, such as compact disks or books, which will not differ from vendor to vendor. Money, in the form of loans, would be the ultimate fungible product.

However, several features of the online environment may compromise the Web’s commercial transparency and defeat complete commodification. First, although consumers and regulators may each have an incentive to search through bank sites, the former for advantageous terms and the latter for regulatory purposes, agencies generally do not contact the larger class of consumers directly and consumers themselves might not often be aware of, much less feel the need to proceed directly to, agency sites. In a sense, the consumers and agencies are like moons orbiting separate sides of the planet of banking sites. To facilitate their direct communication, this article recommends in Part I that bank sites be required to feature at least one link to regulatory sites.

A second obstruction of transparency is the *incomplete comparison* due to the divergent designs of Web sites in presenting their information and terms. Only in theory will many consumers search carefully through all of the various sites, painstakingly comparing their offerings and terms. In practice, the differing appearances, configurations, and placement of links on each Web site will preclude all but the most diligent visitor from compiling a complete record of such data. Indeed, manuals for the creation

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14. See, e.g., Daniel Eisenberg, *Low Loan Rates on the Web*, TIME, Sept. 21, 1998, at 114 (observing that “[s]tarting this fall, shoppers can use priceline.com to describe the loan they’re seeking and, with the help of lendingtree.com, see which lenders offer the best rates and terms. More energetic loan hunters can compare offers at websites like quickenmortgage.com, eloan.com and bestrate.com . . . .”); Theodore Iacobuzio, Comment, *Are Internet Loan Brokers a Threat to Banks? Maybe*, AM. BANKER, Sept. 2, 1998, at 8 (analyzing implications for banks of the rise of “‘Internet loan brokers’-sites such as QuickenMortgage.com, E-Loan, GetSmart, and Lending Tree. And keep an eye on homeadviser.com from Microsoft Corp.”); Jeffrey Kutler, Drew Clark, and Brian Tracey, *Fear of Commoditization Stalks On-Line Banking*, AM. BANKER, Oct. 28, 1997, at 9 (detailing repeated discussions of this issue at bankers’ conference); BILL GATES, *THE ROAD AHEAD 205* (rev. ed. 1996) (predicting that, with the rise of the Internet, “[b]anks will be particularly vulnerable to ‘price wars’ in which customers will shop for banking on the basis of costs and interest rates alone.”).

of commercial Web sites commonly emphasize the limited attention span of visitors to Web sites. Perhaps for this reason many sites feature comparatively inconspicuous links to their “privacy policies” and “terms and conditions” for visitors.

Yet, even the consumer who does locate all of the relevant information on each site will still be faced with the task of parsing variant phrasings of these statements. To remedy the banking industry’s failure, while championing “self-regulation,” to standardize the terms of such policies, and

16. See Effross, supra note 11, at 1283 n.32 (providing examples of such advice).


For the on-line environment, The Federal Financial Institutions Examination Council (FFIEC), whose members include the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, suggests that “[i]nstitutions may find that the format(s) previously used for providing paper disclosures may need to be redesigned for an electronic medium.” FFIEC Guidance on Electronic Financial Services and Consumer Compliance 8 (1998), available at http://www.ffiec.gov/pr071598.htm (visited Dec. 9, 1998). In particular, the FFIEC recommends that in labeling the hyperlinks its Web pages, “[a] financial institution’s use solely of asterisks or other symbols . . . would not be as clear as descriptive references that specifically indicate the content of the linked material.” Id. See also Effross, supra note 11, at 1372-80 (detailing instances of inconspicuous placement of warranty terms on commercial Web sites and questioning the enforceability of such terms).


Stressing the diversity of domestic financial institutions and the corresponding variety of existing laws on financial privacy, id. at 10-12, the authors of the Report appended a general “U.S. Banking Industry Privacy Statement and Principles” developed by the American Bankers Association, Consumer Bankers Association, Bankers Roundtable, and Independent Bankers Association, and endorsed by America’s Community Bankers. Id. at Appendix 3. In short, the principles call on banks to: recognize a customer’s expectation of privacy; collect, retain, and use information about individual customers only where the institution reasonably believes that it would be useful and legal; establish procedures so that a customer’s financial information is accurate, current, and complete; limit employee access to personally identifiable information of customers; maintain appropriate security standards and procedures to protect such information; restrict their disclosure of account information; maintain customer privacy in relationships with third parties; and disclose their privacy principles to consumers. Notably, although two other appendices offer the Web addresses of a number of financial institutions that feature on-line statements of their privacy and security policies, the Report devotes most of its coverage to summarizing traditional regulations applicable to financial institutions and rarely mentions the World Wide Web or the Internet and their capacity to disseminate information regarding banks’ protection of consumers.
in keeping with the reluctance of the government to intervene, this Article proposes in Part II the simple remedy of a set of conspicuously-located "universal icons," each representing and linking to a "package" of standard terms or "virtual boilerplate." Draft proposals for such uniform

Cf. Walter A. Effross, Putting the Cards Before the Purse?: Distinctions, Differences, and Dilemmas in the Regulation of Stored Value Card Systems, 65 UMKC L. Rev. 319, 354-63 (1997) [hereinafter Cards Before the Purse] (reviewing financial community's reaction to Federal Board of Governors' proposal to revise Regulation E with regard to stored value card systems).

19. In its recent Financial Institutions Letter FIL-86-98 (Aug. 17, 1998) on Online Privacy of Consumer Personal Information, (FDIC <http://www.fdic.gov>), the FDIC reaffirmed its support for "industry self-regulation that is specific, meaningful and effective," declaring that it "encourages financial institutions to maintain an awareness of emerging consumer online privacy concerns, and to take voluntary, specific actions to address them. In particular, financial institutions should provide meaningful disclosures of privacy policies and information practices, and effectively enforce those policies and practices." Id. Instead of calling for standardized disclosures, the agency acknowledged the industry's Privacy Statement and Principles, see supra note 18, and suggested that "[f]inancial institutions may want to consider these guidelines when customizing their own privacy policies and practices. Financial institutions may also want to consider observing examples of Web site privacy policies displayed by other financial service providers."

Although the Federal Trade Commission's survey had found banks' failure to disclose privacy policies "troubling because of the sensitive financial information some of those sites collected," see Dean Anason, FTC Finds On-Line Privacy Wanting-Even At Bank Sites, AM. BANKER, June 5, 1998, at 3 (quoting David Medine, the FTC's associate director for credit practices), the FDIC would insist, after receiving similar results from its own survey, that "[w]e would rather see the industry self-regulate than to see new legislation or regulations passed." See Scott Barancik, FDIC Publishes Guidance On Gathering and Using Customer Data on the Net, AM. BANKER, Aug. 18, 1998, at 2 (quoting Ronald Bicker, FDIC deputy director for compliance and consumer affairs). Indeed, one of the Administration's top officials on Internet policy has argued for industry self-regulation on the grounds that "[t]here are tens of thousands of Web sites that form every week around the world . . . . We couldn't enforce all the regulations, even if we made them." See Jennifer Kingson Bloom, FTC to Audit Banks Web-Site Privacy Policies, AM. BANKER, Mar. 6, 1998, at 1 (quoting Ira Magaziner, senior Adviser to the President for policy development). See also 63 Fed. Reg. 65673, 65673 (1998) (noting that in crafting a rule to streamline and update its regulations relating to Internet-mediated operations of thrifts, the Office of Thrift Supervision was "guided" by the "broad principle[ ]" that "[t]he public and insured depository institutions will be best served if statutory and regulatory restrictions are%wepct to a minimum. The premature imposition of restrictive operational standards could impede the development of improved financial services."

For discussions of the Administration's general hesitance to regulate commercial activity on the Internet, see Effross, supra note 11, at 1273-74, n.14-16 (citing interagency report and individual regulators as endorsing this viewpoint); Cards Before the Purse, supra note 18, at 332-35 (detailing regulators' preference for minimal governmental intervention in the development and implementation of stored value card systems).

20. The Office of the Comptroller of the Currency recently announced plans for its Privacy Working Group to develop model disclosures "that can be used by national banks to inform consumers about an institution's information sharing practices and the rights customers have under the Fair Credit reporting Act to "opt-out" from having information about themselves shared between a bank's affiliates," as well as to establish "'effective practices' for Internet disclosure of banks' privacy policies in a clear and conspicuous manner." O.C.C. Release NR 98-59 (June 12, 1998), Comptroller of the Currency,
II. REQUIREMENT OF LINKING TO REGULATORY SITE

In February 1997, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking and request for comment\textsuperscript{21} with regard to its 60-year-old requirement that advertisements for certain types of banks include the phrase, "Member FDIC."\textsuperscript{22} Observing that it was "aware of over 200 insured depository institutions that have a presence on the Internet,"\textsuperscript{23} the agency noted that

\begin{quote}
[\textit{t}\textit{he staff is of the view that every institution's home page is to some extent an advertisement and accordingly should contain the official statement to the extent required by 12 C.F.R. \textsection 328 . . . . Whether subsidiary web pages contain advertisements will vary depending upon the content of the information within the particular web page. The staff is of the view that each such subsidiary web page that contains an advertisement\textsuperscript{24}}]
\end{quote}

\begin{quote}
\textsuperscript{24}\textit{This requirement has been clarified by the FDIC's Interpretive Letters FDIC-94-17 (Mar. 28, 1994) (stating that FDIC sign need not be displayed on night depositories); FDIC-91-60 (July 25, 1991) (providing guidelines for advertising of insured status by savings associations); FDIC-92-15 (Apr. 1, 1992) (addressing color requirement of official signs); and FDIC-91-29 (Apr. 16, 1991) (declining to grant variance concerning required size of signs).}
\end{quote}
should include the official statement, unless such advertisement is subject to one of the [existing] exceptions. . . .''  

In addition, the agency sought comment on whether and under what circumstance it should require insured depository institutions to utilize the electronic equivalent of the official bank or savings association sign in their world wide web sites. Should such determination be different with respect to world wide web sites at which business may be transacted as opposed to sites where only information is conveyed?  

Three months later, the *American Banker* reported that some industry executives were urging the FDIC to abandon the requirement entirely, and also to exempt banking Web sites from its effect. Although many bankers might have sympathized with the rationale that extending the current regulation to the Web "would establish a precedent for regulatory micromanagement of home pages that could return to haunt the industry," those in any way familiar with the increasingly simple technology for creating Web sites could well have wondered at one executive’s statement that "a general rule making use of the official statement optional would be consistent with the goal of allowing technology to develop without interference." In fact, to the extent that the developing technology of Web sites affects at all the textual content that can be displayed, it generally makes such displays easier to construct.  

In a financial institution letter issued in July 1998, the FDIC clarified that it considered "every insured depository institution’s on-line system top-level page, or ‘home page’,[sic] to be an advertisement" and thus required to display the agency’s official advertising statement. It similarly stated that each subsidiary page that contains an advertisement should

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24. *Id.* at 6145 (footnote omitted).
25. *Id.*
27. *Id.* (summarizing position of Marcia Z. Sullivan, government relations director at the Consumer Bankers Association).
28. See, e.g., Effross, *supra* note 11, at 1268 (footnotes omitted) (observing that “[c]ommercially available software packages enable even those computer users who are not versed in the intricacies of programming to create customized Web sites quickly and at a relatively low cost.”).
display the official advertising statement unless subject to one of the general exceptions.\textsuperscript{31}

It might be even more helpful to consumers, however, to require the banks displaying such statements to convert them into hyperlinks to a special page of the FDIC's own Web site. This could be accomplished with minimum technical skill, time, and expense.\textsuperscript{32} Moreover, it would provide to consumers, who might not otherwise be aware of regulatory concerns and capabilities, an immediate means of identifying, through existing search engines of the FDIC's site, unscrupulous site operators who had created an "impostor site" in the name of a legitimate financial institution,\textsuperscript{33} or who had created a site for a bank that had no existence at all.\textsuperscript{35}

31. \textit{Id.} There had been indications that this development would be appreciated by at least some of the regulated community. \textit{See} Jennifer Kingson Bloom, \textit{A Second Bank Is Launched into Cyberspace}, Oct. 18, 1996, supra note 7 (quoting president of Internet-based bank: "We want people to feel like we're a bank, to know that it's FDIC insured, but also to know that it's different because we're a virtual bank.").


33. The Federal Deposit Insurance Corporation maintains on its own Web site a "FDIC Institutions Search Engine" that "will help you determine if an institution has a legitimate charter and is a member of the FDIC." \textit{FDIC <http://www.fdic.gov/consumer/suspicious/>} (visited Oct. 5, 1998) (providing that "[b]y clicking on this link, you can search by institution, holding company, or branch office."). The page also offers links to an e-mail facility by which the user can "[r]eport Internet web sites that may be misrepresenting themselves as legitimately chartered or federally insured depository institutions" and to "Special Alert Financial Institution Letters (FILs)," \textit{see infra note 35, pertaining to unauthorized banking operations currently identified.}


34. \textit{See} Woolley, supra note 15, at 128 (reporting that FDIC expert "worries that inventive crooks could mimic real banks' Web sites. Consumers might know that the bank was real and not know that the mailing address or wire transfer number on the Web site was a fraud.").

35. \textit{See} Pae, supra note 1, at n.11 (noting that in April 1998 "the Federal Deposit Insurance Corp., the Office of Thrift Supervision, the Office of the Comptroller of the Currency and state banking agencies . . . teamed up for a six-month pilot program to weed out faux banks."); \textit{Phony Banks Multiply on Internet, AM. BANKER,} Aug. 4, 1997, at 21 (noting that "at least three Web sites are currently posing as banks, soliciting deposits and promoting everything from free Visa cards and offshore tax shelters to patently phony wealth-building schemes" and discussing joint federal agency task force addressing the problem.); Dean Anason, \textit{Charterless On-Line Banks Raise Regulatory Red Flags, AM. BANKER,} July 18, 1997, at 3 (reviewing OCC scrutiny of purported Internet-only banks that have no charters or deposit insurance).

The FDIC might also use the linked page to educate consumers about a less obvious problem by creating a search engine to reveal which banks, though practicing under different "trade names," are actually affiliated. Even though they might not recognize the connections between different institutions, consumers depositing amounts in several related banks might not have their aggregate deposits insured for an amount greater than a total of $100,000. Finally, by regularly tracking back the sites linking to its special page, the FDIC could identify imposter or false banks.

operate search engines that allow concerned consumers to verify the legitimacy of and, in the FDIC's case, the insurance of the deposits of, any specific bank. See also Click on FDIC Web Site to Help Fend Off Fraudulent Internet Banks, FDIC CONSUMER NEWS, Summer 1998, FDIC <http://www.fdic.gov/consumer/consnews/sum98/fending.html> (reporting the installation on the FDIC's Web site of the agency's "new, 'user-friendly' service that enables Internet users to check the validity of a bank on the 'Net and to report suspicious sites to the FDIC via e-mail."); VARTANIAN ET AL. supra note 7, at 146 (noting that "[o]ne part of the OCC's Internet enforcement strategy includes issuing OCC Alerts to inform other federal and state banking agencies about unauthorized Internet banks . . . . In its Alerts, the agency warned that these entities lacked necessary charters and that any deposits made with these institutions would not be eligible for FDIC deposit insurance."); id. at 211 (observing that "[o]ne part of the FDIC's Internet enforcement strategy includes issuing financial institution letters ("FILs") to inform other federal and state banking agencies about uninsured Internet banks."). It might be feasible for the FDIC to install on this special page links to corresponding pages on the Web sites of other regulatory agencies, such as the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Trade Commission; to the agency's discussion of its history and mission, see FDIC <http://www.fdic.gov/consumer/symboltext.html>; or to a special page that would in turn link to these or other consumer resources.

36. This approach would supplement that anticipated by the FDIC in the Winter 97-98 issue of its Consumer News, available online at FDIC <http://www.fdic.gov/consumer/consnews/winter9798/confuse.html>, which indicated that the agency and the other federal regulators plan to announce soon new procedures for banks and thrifts to use if they operate branches, Internet sites or other facilities under different trade names. The interagency guidance includes suggestions that signs and advertising clearly indicate the connection between a particular facility and the bank or thrift that owns it.

37. See Withdrawal of the Reference, supra note 32, at 654 n.8 (describing the use of a popular search engine to perform this operation).

38. The American Bankers Association is prepared to implement a private-sector version of this proposal. As this Article was going to press, the organization announced the introduction of a "SiteCertain" program, to be implemented by its new electronic commerce subsidiary, ABAecom.

A special "seal," or icon, will be placed by the ABA on pages of Web sites of participating banks. "By clicking on the seal, a connection is made to a secure online database. A small screen will appear providing instructions that customers can use to assure themselves that they are visiting the Web site of a SiteCertain participant. Consumers will be given a number of other options if they want further information—including a connection to the Federal Deposit Insurance Corp. (FDIC) database of financial institutions." ABA Introduces Web Site Validity "Seal," (dated Sept. 28, 1998), American Bankers Association: <http://www aba.com/abatool/showme_re1.html?/location+PR_Sitecertain.> (visited Oct. 28, 1998).
III. ADOPTING STANDARD ICONS FOR BOILERPLATE LEGAL TERMS

Appendices 1 and 2 of this Article provide proposals of uniform terms for, respectively, a “terms and conditions” statement and a privacy policy. Adapted from terms available on existing Web-banking sites, these drafts attempt to: (1) explain to the consumer in plain language such technological concepts as “cookies” and such technical legal issues as disclaimers of warranties; (2) order the provisions with regard to their relative importance to the customer (for example, by putting the warranty-disclaimer and liability-limitation sections first, rather than after the less-critical sections concerning intellectual property rights); and (3) institute default terms that the bank will use to protect the customer’s privacy rights rather than requiring the customer to “opt out” of a more restrictive regime.

In practice, banks could insert standard icons (such as the scales of justice for the terms and conditions, or a padlock for privacy policies) on their home pages to indicate their adherence to the uniform set of provisions represented by that icon. A visitor clicking on such a link would be taken to the page, either on a central site maintained by, for instance, the American Bankers Association, or on a page operated by the bank itself elsewhere on the bank’s web site. Like the other pages on the bank’s site, this one could be changed at any time without notice; however, the bank would no longer be allowed to use the standard icon once its terms diverged from the uniform terms.

Ultimately, several different icons (perhaps distinguished by color or by an identifying letter) might evolve, each with its own connotations. However, if too many varieties of “terms and condition” or “privacy” icons (perhaps beyond three varieties of each) were in use, the value of the standardization would be greatly diminished.

39. Even in this second case, the American Bar Association could maintain a page of standard terms for comparison by customers to the corresponding page on a bank’s own site.
APPENDIX 1

PROPOSED UNIFORM "TERMS AND CONDITIONS" STATEMENT

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THIS SITE. BY ACCESSING ANY PAGE OF THIS SITE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS BELOW, DO NOT ACCESS THIS SITE OR ANY OF ITS PAGES.

Limitation of Liability

No Liability Generally

NEITHER THE BANK ("WE" OR "US") NOR ITS HOLDING COMPANY NOR ANY OF OUR SUBSIDIARIES OR AFFILIATES MAKES ANY REPRESENTATIONS ABOUT THE SUITABILITY OF THE CONTENT OF THIS SITE FOR ANY PURPOSE.

IN NO EVENT WILL WE BE LIABLE FOR ANY DAMAGES, UNDER ANY THEORY OF LIABILITY (INCLUDING CONTRACT, NEGLIGENCE, OR OTHER TORT ACTION), INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, LOSSES OF DATA OR PROFITS OR EXPENSES ARISING OUT OF OR IN ANY WAY CONNECTED WITH, ANY PARTY'S USE, COPYING, OR DISPLAY OF, OR INABILITY TO USE, COPY, OR DISPLAY, THIS SITE, OR IN CONNECTION WITH ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, OR LINE OR SYSTEM FAILURE, EVEN IF WE OR OUR REPRESENTATIVES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES.

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These Terms and Conditions are the entire agreement between the parties relating to the use of this site.

Questions regarding these Terms and Conditions can be sent to [electronic mail address]. Or you can telephone us during [hours] at [toll-free and local telephone numbers].
APPENDIX 2

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YOU CAN SET UP YOUR WEB BROWSER TO INFORM YOU WHEN "COOKIES" ARE BEING SENT AND/OR TO PREVENT COOKIES FROM BEING SENT. [INSERT LINK HERE TO PAGE PROVIDING SUCH INSTRUCTIONS.]
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(2) The date and time you access our web site;

(3) The pages that you visit on our site and the sequence in which you visit them;

(4) The amount of time that you spend on any given page of our site;

(5) The Internet address of the web site that you visited immediately before visiting our web site;

(6) The Internet address of the site that you visit immediately after leaving our site;

(7) The material that you have downloaded from our site as an individual;
(8) The type of operating system (e.g., Macintosh, Windows) on your computer;

(9) The type of browser (e.g., Netscape, Internet Explorer) that you are using to view the site.

II. INFORMATION THAT YOU MAY SUPPLY TO US ACTIVELY

If, in interacting with our site, you actively transmit to us by electronic mail information such as your electronic mail address or your account number, or information concerning your account, to enable you or us to perform certain tasks (for example, to review your accounts or to correspond with us), we will collect your information if necessary to interact with you. We will also retain the content of the form or electronic mail, the electronic mail address and our response. This allows us to retain an audit trail of our contact and provide you with the product, service or information that you may have requested.

The information that you actively supply to us will be used only for the purpose specified. For example, if you send us your electronic mail address and indicate that you wish to be notified by electronic mail of special promotions offered by the Bank, the information will be used only for that purpose and only until you ask us to stop (using the 'unsubscribe' instructions that we will provide to you with each such electronic mail). WE WILL NEVER USE YOUR ELECTRONIC MAIL ADDRESS TO SEND YOU ANY UNSOLICITED MESSAGE OR INFORMATION, NOR WILL WE SHARE IT WITH OR SELL IT TO ANYONE ELSE FOR THAT PURPOSE.

Questions regarding our privacy statement can be sent to [Bank’s electronic mail address].
Or you can telephone us during [hours] at [Bank’s toll-free and local telephone numbers].

III. RESTRICTIONS ON EMPLOYEE ACCESS TO INFORMATION

We will limit our employees’ access to personally identifiable information to those with a business reason for knowing such information. We will ensure that our employees are trained to understand the importance of confidentiality and customer privacy, and will take appropriate disciplinary measures where necessary to enforce employee privacy responsibilities.
IV. RESTRICTIONS ON THIRD-PARTY ACCESS TO INFORMATION

Customer information will only be disclosed to authorized account holders, and only after identification of that account holder has been verified. Verifying information may include your social security number, date of birth, place of birth, mother’s maiden name, signature, and/or other identifying information. If the information request is made over the telephone or by electronic mail and we are uncertain about the identity of the person requesting the information, we will ask that the request be made in “hard copy” writing or in person.

We will only share with third parties specific information about our customer accounts or other personally identifiable information under one or more of the following circumstances:

1. to comply with applicable laws and regulations of regulatory authorities and law enforcement agencies (e.g., subpoenas, court orders, investigation of fraudulent activity, etc.);
2. to protect us against fraud;
3. to complete banking transactions or transfers initiated by you (for example, to assist vendors or service providers that we hire to prepare statements or to provide support or services for one or more of our products.);
4. to verify the existence and condition of your account for a third party such as a credit bureau or merchant;
5. to provide information to a reputable credit bureau or similar reporting agency;
6. at our discretion, within our family of banks and affiliated companies, in order to service your account with us; and
7. by your request.

If a court order or subpoena requires us to release information about you, we will notify you promptly to give you an opportunity to exercise your legal rights. The only exceptions to this policy are when we are prohibited by court order or law from notifying you, or cases in which fraud and/or criminal activity is suspected.

If we provide personally identifiable customer information about you to a third party, the Bank will insist that the third party adhere to similar privacy principles to keep such information confidential.
V. MAINTENANCE OF ACCURATE INFORMATION

We have implemented procedures to help assure that our customers’ financial information is accurate, current, and complete in accordance to commercial standards. While some procedures are required by federal or state law, we also have procedures for responding to requests to correct inaccurate information in a timely manner, and to update information and remove old information. You should notify us immediately if you receive information regarding your relationship with us that you believe to be inaccurate.

KIDS: Be sure to ask your parents for permission before you send any information about yourself to us or anyone else over the Internet.