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PROTECTION OF THE PUBLIC
THROUGH THE PAID-DURING-SERVICE CODE

Statement of Earl W. Kintner,
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Before The
Magazine Publishers Association
White Sulphur Springs, West Virginia
May 29, 1968

The title of this talk just as well could have been "Protection of the Paid-During-Service Circulation Industry Through the PDS Code". Anyone readily may see that the public and the industry share mutual interests.

Circulation activity presents a continuing challenge commonly shared by each publisher. In no case does he wish to see a threat to any circulation source, whether or not he is using this particular source at a given time.

The Paid-During-Service subscription selling operation is one of these vital sources of magazine circulation. As you know, it gives many families the opportunity of buying several magazine subscriptions at one time without paying the cost in advance.

From circulation statistics among publishers generally it is evident that this service is in great demand by the public and yet, this important source was threatened by a cancer. That cancer was embodied in a small minority of industry people who suffered evidently from an inferiority complex, a complex leading them to believe that the public would not buy magazines through this particular plan, unless the sales presentations were deceptive, or danced on the edge of such illegality.

I have been connected with this industry in the development of the PDS Code since 1965 and I have come to know many of its problems and most of its leaders quite intimately. I am convinced that proper selling will not diminish sales or profits. In fact the housewife who buys magazines under the Paid-During Service plan is getting a real bargain for which no person in the magazine publishing industry need apologize. In the long run, proper selling will increase profits significantly, for few sales will have to be cancelled because they were deceptively sold.

The small minority, however, who have not grasped these facts, have caused grave problems for the industry. As a result of their activities, the Federal Trade Commission has conducted extensive investigations of almost every major circulation company in the industry. Some municipalities and states are contemplating the enactment of highly restrictive

and discriminatory legislation which in many instances would have the effect of prohibiting the sale of magazine subscriptions on a door-to-door basis, and, in fact, in some places such legislation has been enacted. Also, Federal legislation is being considered in Congress which it is felt would have an unnecessarily deleterious effect in the industry.

It is evident to me that the executives of the leading companies in the industry have fully grasped the problems. In early 1965, a committee comprised of highly responsible leading executives of the principal circulation companies, with unqualified support from their publishers, decided that in order to forestall probably serious injury to the industry, which could result from federal and state governmental reaction to certain types of selling practices (even though practiced only by a minority), and to improve the reputation and standing of the industry, industrywide self-regulation was the only answer. It was decided by the Committee to develop a code which would effectively eliminate improper selling activities. Counsel was engaged to implement this decision. As a result, actual operating conditions in the industry were thoroughly investigated and, after extensive consultation with all principal industry members, a Code tentatively was agreed upon, after consultation with the staff of the Federal Trade Commission.

In the Code, the principal standards of selling practices were set forth, as well as provisions for enforcing those standards. In formulating the selling rules, the relevant decisions and policies of the Federal Trade Commission were taken into account, in addition to the views and necessities of the industry. In addition, in order to meet government standards, the Code was designed so that any agencies or persons affected by decisions under it would be afforded total fairness and full opportunity for their side of the controversy to be heard. Great care also was taken in formulating the Code to eliminate any provisions which might have the effect of restraining competition between the industry participants or in the industry generally.

The Code provides that an Administrator shall be appointed by the Board of Directors of the Paid-During-Service Section of the Central Registry of Magazine Subscription solicitors. He is responsible for the administration of the Code and is empowered to originate all proceedings for enforcement of its substantive rules. He may bring proceedings against signatory agencies, and may hold hearings to determine whether such companies have violated the Code rules. The companies signatory to the Code are liable for liquidated damages if they have supported or condoned improper selling activity and also, although they have not supported or condoned such

activity, they may be responsible if improper selling practices have taken place in circumstances where they should have known of such activity, and should have taken steps to prevent it. Persons engaging in improper selling activities may be found to be wilful violators of the Code if the Administrator finds that each has violated the Code on three separate occasions with the knowledge that the activity constitutes a violation of the Code.

Penalty assessments will be levied only against the signatory agencies. Such agencies are held responsible for Code violations by their solicitors and representatives, even though they have no knowledge of such violations but under the circumstances should have been informed of the activity of their solicitors and representatives. The effect of this is to instill integrity at the top of each agency and to encourage practice of such integrity at each level of responsibility, to eliminate improper selling practices.

It was recognized that government approval for the Code was necessary and the proposed Code was submitted for clearance to the Federal Trade Commission. On May 22, 1967, the Commission, in a precedent setting action, approved a modified Code for a three-year experimental period. The Commission in effect entered into a limited

partnership with the industry to promote compliance with the law. It required that the Administrator must submit reports to the Commission of each complaint which is received, considered or investigated and of each action taken. Further, the Commission's staff was instructed to initiate periodic inquiries after the plan had been put into effect to determine and report to the Commission as to how it is actually working. After three years the industry must resubmit its request for approval.

The industry must satisfy the Commission that the experiment has proved itself, that the industry self-regulation can benefit industry, government, and the public. To do this, the industry must fulfill its obligation, which is in effect spelled out in the Code, to rid itself of improper sales practices. If, at the end of the three-year period, we cannot demonstrate that the Code has had the effect of substantially lessening such activity, then we cannot hope to have it continued by the Commission, and the objectives for which it was created will be unfulfilled. In this event, the probability is that governmental activity, in the form of legislation and law suits, will be renewed with more vigor than ever before.

The administration and operation of the Code must have the effect of eventually eliminating violations or at least reducing them to a tolerable level from the point of view of the governmental enforcing

authorities. One of the principal tools given the Administrator for the accomplishment of this end is the assessment of liquidated damages against agencies which have supported or condoned violations, or which should have known of violations by its solicitors. The Board of Directors of the Paid-During-Service Section of Central Registry has provided general guidelines to the Administrator in making liquidated damage assessments for violations of the Code. The general principle to be utilized by the Administrator is "that the damages assessed should be sufficient to deter future violations, but should not be of such a nature as to be confiscatory . . ." The Administrator also considers other factors in making such assessments, including whether the violation is isolated or widespread, the extent to which it causes damage to the industry's reputation, and whether the violations have been supported or condoned by supervisory personnel. If this Code is to be successful, if the objective of the industry leaders is to be achieved, and ultimately if the industry is to be free from oppressive federal regulation and prosecution by various governmental authorities, the general principle of deterrence in making liquidated damage assessments must be applied rigorously. The object is to rid the industry of improper sales practices, or reduce such activity to minimal levels. The industry no longer can live with such practices.

Monetary penalty assessments alone will not do the job.

One of the most important duties of the Administrator is to educate the industry concerning the requirements of the Code. He must use all resources at his command to urge circulation and sales executives to take proper steps, including, where necessary, expanded training programs, to insure that deceptive selling is not used. The Administrator, as part of his educational and public relations duties, also must maintain relations with Better Business Bureaus, Chambers of Commerce, and various law enforcement authorities to urge greater reliance upon the Code and the concept of self-regulation by such groups. Cooperation with the Better Business Bureaus is particularly essential. As confidence grows in the fairness and effective operation of the Code, among all such groups, the more the industry will be left to regulate its own affairs, and be free from regulation and enforcement from without.

I might point out that the concept of industry self-regulation and voluntary compliance with law is truly at the crossroads -- its fate rests in no small measure with the success of the PDS Code. The Code's failure could register the death knell for the concept of self-regulation and voluntary compliance in other industries. Successful operation of the Code

would, of course, immeasurably enhance chances for self-regulation and self-policing in other industries. More importantly, however, the reputation of this industry will be insured for long periods to come. The success of the Code will place the PDS industry in its rightful place among the rest of American business. I might also add in passing that I am painfully aware that, in part, my own reputation as an advocate of industry self-regulation and voluntary industry compliance with law is at stake. There are some influential persons in government who believe that self-regulation is merely a subterfuge to escape from the requirements of law. I do not believe this, and I look forward to the successful operation of the Code to prove me correct.

As I said above, the Federal Trade Commission, in authorizing this Code, has engaged in a new experiment in industry self-regulation and in government cooperation with industry. The experiment is for three years duration. One year has expired. During that time we have gotten a Code into operation, complaints have been issued and some assessments have been levied. I know that the agencies that have been assessed do not like it. It is not pleasant to have to pay under such circumstances. Hopefully, however, payment now will have the effect of preventing further violations, and averting even greater payment and losses in the years to come.

This industry is meeting the challenge. Its leaders have spent untold hours during the past three years in good-faith efforts to eliminate improper selling practices from the marketplace. These leaders have taken positive and constructive steps to preserve an important, and perhaps essential, means of bringing good periodical reading material into the homes of America. The PDS industry thus has demonstrated its firm commitment to integrity in selling and the protection of the good name of the magazine publishing industry.

I see in the audience today several who were in attendance at the annual luncheon of the Audit Bureau of Circulations in Chicago on October 22, 1959, which I was privileged to address during my services as Chairman of the Federal Trade Commission.

Many of you will recall that during this period there was a vigorous Congressional investigation of rigged quiz shows, attacks in many quarters on deceptive advertising and even on the utility of advertising in the economy, as well as demands both within and without government for more law and more regulation of advertising.

At that time, when my own day-to-day responsibilities included the interpretation and enforcement of legal standards for business, I pointed

out that it is preferable for a sincere government officer to encourage industry in its own self-interest to express the integrity and self-policing so important in a society which emphasizes individual responsibility.

I can think of no more appropriate note on which to end these remarks than to repeat the closing remarks of that address of nearly nine years ago on "Self-Discipline at the Crossroads". I said then, and I say here again with equal feeling:

I am quite aware that cynics ridicule the idea of self-discipline by businessmen. And while I concede there is evidence aplenty to support their cynicism, I know that without such voluntary compliance with law, this nation would be confronted with two unacceptable alternatives: becoming a police state or surrendering to commercial chaos.

Granted that both alternatives seem remote at this time, I think it is tremendously important that we realize that self-discipline by businessmen can deteriorate - and that decay hastens decay. The capacity of business to police itself can be sapped

by indifference, by ignorance, by avarice.

It also can be undermined by the surrender of moral responsibilities to government - the demanding of new laws to fill the vacated bastions of self-reliance.

Far better that governmental policing be accorded its proper role of restraining the errant few. Give it authority and strength to strike fast and hard at those who refuse to police themselves.

Let us accept and put our faith in the political and economic system that developed this great nation of ours. Let us exalt in the privilege of living and working under a capitalistic free enterprise system - a system whose energies derive from the freedom and capacity of individual citizens and whose necessary restraints are imposed by government. One is the engine; the other the brakes. We need both. And please, God, may we never transpose these functions.

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Protection of the Public Through the Paid-During- Service Code

by Earl W. Kintner

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Counsel for Paid-During-Service Section
Central Registry of
Magazine Subscription Solicitors,
Sponsored by Magazine Publishers Association
Arent, Fox, Kintner, Plotkin & Kahn
Washington, D. C.*

TEXT OF SPEECH MAY 29, 1968
49TH ANNUAL MANAGEMENT CONFERENCE
MAGAZINE PUBLISHERS ASSOCIATION
WHITE SULPHUR SPRINGS, W. VA.

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Circulation activity presents a continuing challenge commonly shared by each publisher. In no case does he wish to see a threat to any circulation source, whether or not he is using this particular source at a given time.

Vital Source of Circulation

The Paid-During-Service subscription selling operation is one of those vital sources of magazine circulation. It gives many families the opportunity of buying several magazine subscriptions at one time and paying for them during service.

From circulation statistics among publishers generally, it is evident that this service is in great demand by the public and yet, this important source was threatened by a cancer. That cancer was embodied in a small minority of industry people who suffered evidently from an inferiority complex, a complex leading them to believe that the public would not buy magazines through this particular plan, unless the sales presentations were deceptive, or danced on the edge of such illegality.

A Bargain For Housewife

I have been connected with this industry in the development of the PDS Code since 1965 and I have come to know many of its problems and most of its leaders quite intimately. I am convinced that proper selling will not diminish sales or profits. In fact, the housewife who buys magazines under the Paid-During Service plan is getting a real bargain for which no person in the magazine publishing industry need apologize. In the long run, proper selling will increase profits significantly, for few sales will have to be cancelled because they were deceptively sold.

The small minority, however, who have not grasped these facts, have caused grave problems for the industry. As a result of their activities, the Federal Trade Commission has conducted extensive investigations of almost every major circulation company in the industry. Some municipalities and states are contemplating the enactment of highly restrictive and discriminatory legislation

which in many instances would have the effect of prohibiting the sale of magazine subscriptions on a door-to-door basis. In some places such legislation has been enacted. Also, Federal legislation is being considered in Congress which it is felt would have an unnecessarily deleterious effect in the industry.

Industry Grasps Problems

It is evident to me that the executives of the leading companies in the industry have fully grasped the problems.

In early 1965, a committee comprised of highly responsible leading executives of the principal circulation companies, with unqualified support from their

Code Affords Total Fairness

In the Code, the principal standards of selling practices were set forth, as well as provisions for enforcing those standards.

In formulating the selling rules, the relevant decisions and policies of the Federal Trade Commission were taken into account, in addition to the views and necessities of the industry.

In addition, in order to meet government standards, the Code was designed so that any agencies or persons affected by decisions under it would be afforded total fairness and full opportunity for their side of the controversy to be heard. Great care also was taken in formulating the Code to eliminate any provisions which might have the effect of restraining competition between the industry participants or in the industry generally.

The Administrator

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publishers, decided that in order to forestall probably serious injury to the industry, which could result from federal and state governmental reaction to certain types of selling practices (even though practiced only by a minority), and to improve the reputation and standing of the industry, industrywide self-regulation was the only answer. It was decided by the Committee to develop a code which would effectively eliminate improper selling activities. Counsel was engaged to implement this decision.

As a result, actual operating conditions in the industry were thoroughly investigated and, after extensive consultation with all principal industry members, a Code tentatively was agreed upon, after consultation with the staff of the Federal Trade Commission.

Persons engaging in improper selling activities may be found to be willful violators of the Code if the Administrator finds that each has violated the Code on three separate occasions with the knowledge that the activity constitutes a violation of the Code.

Penalty Assessments

Penalty assessments will be levied only against the signatory agencies. Such agencies are held responsible for Code violations by their solicitors and representatives, even though they have no knowledge of such violations but under the circumstances should have been informed of the activity of their solicitors and representatives. The effect of this is to instill integrity at the top of each agency and to encourage practice of such integrity at each level of responsibility, to eliminate improper selling practices.

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The Commission in effect entered into a limited partnership with the industry to promote compliance with the law. It required that the Administrator must submit reports to the Commission of each complaint which is received, considered or investigated and of each action taken.

Further, the Commission's staff was instructed to initiate periodic inquiries after the plan had been put into effect to determine and report to the Commission as to how it is actually working. After three years the industry must resubmit its request for approval.

Three-Year Trial

The industry must satisfy the Commission that the experiment has proved itself, that the industry self-regulation can benefit industry, government, and the public.

To do this, the industry must fulfill its obligation,

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In this event, the probability is that governmental activity, in the form of legislation and law suits, will be renewed with more vigor than ever before.

Operation Guidelines

The administration and operation of the Code must have the effect of eventually eliminating violations or at least reducing them to a tolerable level from the point of view of the governmental enforcing authorities.

One of the principal tools given the Administrator for the accomplishment of this end is the assessment of liquidated damages against agencies which have supported or condoned violations, or which should have known of violations by its solicitors. The Board of

Great Task To Educate Industry, Public

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Self-Regulation at Stake

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The Administrator also considers other factors in making such assessments, including whether the violation is isolated or widespread, the extent to which it causes damage to the industry's reputation, and whether the violations have been supported or condoned by supervisory personnel.

If this Code is to be successful, if the objective of the industry leaders is to be achieved, and, ultimately, if the industry is to be free from oppressive federal regulation and prosecution by various governmental authorities, the general principle of deterrence in making liquidated damage assessments must be applied rigorously. The object is to rid the industry of improper sales practices, or reduce such activity to minimal levels. The industry no longer can live with such practices.

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Successful operation of the Code would, of course, immeasurably enhance chances for self-regulation and self-policing in other industries. More importantly, however, the reputation of this industry will be insured for long periods to come. The success of the Code will place the PDS industry in its rightful place among the rest of American business.

I might also add in passing that I am painfully aware that, in part, my own reputation as an advocate of industry self-regulation and voluntary industry compliance with law is at stake. There are some influential persons in government who believe that self-regulation is merely a subterfuge to escape from the requirements of law. I do not believe this, and I look forward to the successful operation of the Code to prove me correct.

Violators Assessed

As I said above, the Federal Trade Commission, in authorizing this code, has engaged in a new experiment in industry self-regulation and in government cooperation with industry. The experiment is for three years duration. One year has expired.

During that time we have gotten a Code into operation, complaints have been issued and some assessments have been levied. I know that the agencies that have been assessed do not like it. It is not pleasant to have to pay under such circumstances. Hopefully, however, payment now will have the effect of preventing further violations, and averting even greater payment and losses in the years to come.

Magazines Lead Effort In Self-Regulation

This industry is meeting the challenge. Its leaders have spent untold hours during the past three years in good-faith efforts to eliminate improper selling practices from the marketplace.

These leaders have taken positive and constructive steps to preserve an important, and perhaps essential, means of bringing good periodical reading material into the homes of America.

The PDS industry thus has demonstrated its firm commitment to integrity in selling and the protection of the good name of the magazine publishing industry.

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Self-Policing Encouraged

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Background of Paid-During-Service Code

Paid-During-Service selling of magazine subscriptions is defined by the Code as the method whereby the consumer may purchase two or more periodicals, payment for which is made in monthly instalments of equal amounts over a period of time as clearly set forth in the subscription contract. Solicitation is made in person.

Paid-During-Service magazine field selling accounts for an important part of magazine circulation growth. In 1967, more than 6,250,000 subscriptions were sold by the publisher-owned and independent PDS agencies. The subscribers tend generally to be younger families for whom instalment buying is the normal way of acquiring the things they need as they establish their households.

Printed copies of the Code have been distributed na-

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I am quite aware that cynics ridicule the idea of self-discipline by businessmen. And while I concede there is evidence aplenty to support their cynicism, I know that without such voluntary compliance with law, this nation would be confronted with two unacceptable alternatives: becoming a police state or surrendering to commercial chaos.

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tionwide to more than 1,000 Better Business Bureaus and local Chambers of Commerce who have cooperated for more than 20 years with Central Registry for Magazine Subscription Solicitors in upgrading the standards for selling magazine subscriptions.

The Code has been signed by all the publisher-owned paid-during-service magazine selling agencies and other independent agencies which account for virtually the entire field of operations.

The Code was approved by the Federal Trade Commission May 22, 1967, became effective January 16, 1968 and, after three years, must be resubmitted for approval.

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