Anticipating the 21st Century:

Consumer Protection Policy in the New High-Tech, Global Marketplace

May 1996

FOREWORD

Every report is of necessity the product of many hands. This one is no exception.

The Bureau of Consumer Protection is grateful to the experts outside the Commission who helped identify the issues and speakers for the hearings on which this report is based; and to the hearing participants, whose thoughtful, lively, and provocative presentations continue to give us much food for thought.

Special debts of gratitude to those inside the Commission as well: Greg Hales and his colleagues, whose technical expertise during the hearings helped bring many presentations to light; the staff of the Bureau of Consumer Protection — especially Tom Rowan and Robert Lippman — who contributed talent, time, and energy to the effort; and Dawne Holz, who patiently prepared this report for publication.

Finally, a word of appreciation to our colleagues in the public and private sectors who are working with us to prepare for the critical issues facing businesses and consumers in the 21st century.

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EXECUTIVE SUMMARY*

For four days in November 1995, the Federal Trade Commission explored consumer protection issues in the emerging technology-based marketplace. The hearings focused on three rapidly evolving communications technologies — the telephone, television, and computer — and on the special challenges of globalization.

The Commission's goal was to look ahead: to learn more about how these technologies are developing and how they may be used to market goods and services; to identify significant consumer protection issues associated with the new technologies; and to consider how best to address those emerging issues.

The Commission took testimony from more than 70 experts in the fields of law, business, technology, economics, marketing, consumer behavior, and consumer education. Their comments and observations provoked discussions that produced an especially rich hearing record. That record is the basis for this report.

While the hearings did not produce consensus on every issue, a number of themes emerged. Among them:

- *Information technologies are developing at a dizzying pace.* Next generation technology is already off the drawing board: interactive "smart" TV that lets consumers use their remote controls to order merchandise from home and get news on demand; full-motion video over superfast telephone lines; television that appears in the corner of desktop computer monitors — and much more. The changes in technology and their impact on the marketplace offer challenges and opportunities for law enforcement officials, businesses, and consumers.

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* This report was prepared by staff at the FTC. It does not necessarily reflect the views of the Commission or any individual Commissioner.

- *The technologies may change the marketplace significantly for consumers — giving them access to potentially unlimited amounts of information, a global marketplace, and more shopping convenience.* Already, the Internet enables consumers to pick and choose the information they want from sources around the world, and to receive it at the click of a mouse. The next wave of telephone and television technologies also promises to offer consumers new information, shopping, and entertainment services.
- *New technologies may provide fertile ground for old-fashioned scams.* The Internet may allow scam artists to set up shop easily and cheaply, anywhere in the world, and skip out on unwary consumers without leaving a trace. Recent experience with new technologies, such as pay-per-call telephone services, suggests that fraudulent operators are quick to take advantage of new marketing tools.
- *New technologies are pushing some consumer issues — such as privacy, security, and marketing to children — to the forefront of public debate.* Millions of consumers, including children, are encouraged to use the Internet, and the number of people going online is growing daily. Broad-based accessibility to the new, and still evolving, technologies raises fundamental questions for policy makers, law enforcement officials, businesses, and consumers.
- *The challenges for government consumer protection agencies will increase at a time when their resources — human and financial — are stretched tighter than ever*. There is no sign that low-tech scams will go away, and strong evidence that "next-tech" scams will increase and be more difficult to detect and track across international borders. Law enforcement agencies must work harder, smarter, and in concert to maximize the impact of their limited resources.

- *As the new marketplace develops, it is in the interest of both the private and public sectors to see that sound consumer protection principles are in place.* Private sector initiatives to assure consumer protection are crucial. Without these assurances, consumers may avoid the new technologies.
- *Consumer protection is most effective when businesses, government, and consumer groups all play a role.* Meaningful consumer protection takes: (1) coordinated law enforcement against fraud and deception; (2) private initiatives and public/private partnerships; and (3) consumer education through the combined efforts of government, business, and consumer groups.

The report that follows is based on the written and oral testimony offered during the hearings. It attempts to capture the dynamic flavor of the discussions and to present the various views of the participants; it does not try to reconcile differences or offer definitive answers to emerging consumer protection concerns. It provides much food for thought and a wide range of suggestions on how best to protect consumers in the rapidly changing marketplace, and will be used to help the Commission staff plan a consumer protection agenda. Indeed, it will be followed next year by a report of the actions taken to deal with many of the issues raised during the hearings.

The report that follows also may serve as a basis for future dialogue and collaborative efforts by all those with a stake in consumer protection issues as the new marketplace unfolds.

THE NEW MARKETPLACE — AN OVERVIEW

From Main Street to Wall Street, electronic consumers are plugging in and logging on — surfing and chatting in a community that is at once world-wide and intimate. With the click of a mouse, they can read newspapers, tour museums, buy groceries, or send flowers to Mom. In short, their computers give them nearly instant access to information, entertainment, and merchandise.

For years, the telephone and the television have been the stuff of everyday life. As the technology of these tools converges with that of the computer, consumers will be offered more choice, more convenience, and more control than most of them ever thought possible. Unfortunately, they also may encounter new consumer protection problems at a time when resources at all levels of government are shrinking.

To deal with the concerns emerging in the new high-tech global marketplace, consumer advocates, educators, the business community, and government must join forces to design and implement measures to protect consumers, promote competition, and encourage the development of still more technology.

BENEFITS OF THE NEW TECHNOLOGY

An Information Explosion

The flood of information available to consumers is arguably the most dramatic development in the marketplace of the '90s. In just a few minutes on the Internet, consumers can research their hobbies, read up-to-date news summaries, and shop for cars. Although still in its infancy as a marketing medium, the Internet itself promises to grow exponentially in the next few years. Many expect online marketing and commerce to follow suit.

Consumers will be able to use the storehouse of information on the Internet to make better informed decisions, [1] although the availability of information does not

necessarily assure its use. Indeed, as the amount of information in the marketplace grows, some observers predict that consumers will be overwhelmed and confused.[2] Others forecast that consumers will face obstacles as they try to take advantage of the available data: for example, some consumers may not have full access to the information technologies, while others simply may lack the sophistication to use them.[3]

Greater Choice

Thanks to the Internet, consumers soon will find themselves in a global marketplace with more avenues for shopping, more options in terms of price and services, and more access to a seemingly endless array of products.

The Internet probably will not replace more traditional marketing vehicles.[4] Yet even these vehicles — the television and telephone — are expanding the amount of information and the products they are able to deliver. Since the 1960s, for example, the number of television stations has tripled and the number of channels per household has multiplied sixfold.[5] Telephone services are offering a constantly expanding range of information, products, and entertainment. For example, consumers now can sample and purchase compact discs on the telephone and receive full motion video over their telephone lines.[6]

Convenience

Consumer transactions online soon may become routine. Increasingly, it will be possible for consumers to conduct entire transactions online, from selecting products and negotiating prices to ordering and paying for goods, filling out product registration cards, and even receiving the products, when — like software — they can be transmitted that way.[7] In the future, interactive television and the Internet may offer face-to-face shopping in the consumer's own living room.[8]

Consumer Sovereignty

The new interactive media have been hailed as "the first intelligent media on

the consumer side." [9] That is because the technology has the potential to give consumers greater control over the information they receive. On the Internet, for example, they can seek out the information they are interested in and ignore the rest.[10]

For years, the remote control has played a similar role for television viewers, but emerging technologies promise even more opportunities for consumers to regulate what comes into their homes via the television, the Internet, and the telephone.[11] Telephone technologies soon may give consumers the ability to block calls they do not want to receive, specify calls they will receive, and identify businesses that are calling. [12]

To the extent that control shifts from the media to the consumer, advertisers will have to provide messages that are more useful and interesting — or run the risk of being tuned out. [13]

THE FLIP SIDE: CHALLENGES OF THE NEW TECHNOLOGY

Clearly, the new technologies create exciting and numerous benefits for consumers. Just as clearly, they create new risks for consumers and uncharted territory for industry and government. The emerging areas of concern suggest that successful solutions call for creative thinking and cooperation among all interested participants.

Increased Fraud and Deception

Modern technology is partly responsible for the fact that fraud has increased markedly in the last 30 years. [14] While most fraud in the 1960s took place face-to-face, often in door-to-door sales, today it is perpetrated on a massive scale, often over telephone lines. [15]

Globalization also has facilitated the boom in fraud. It is easy for fraudulent telemarketers to move their operations out of the country to avoid U.S. law enforcement, yet continue to scam American consumers. [16] Many pay-per-call

scams and fraudulent telemarketing operations, for example, are moving overseas as a result of aggressive law enforcement at home. [17]

Fraudulent marketers will continue to use the telephone, but they soon may gravitate to the Internet in large numbers. [18] Some of the same features that made pay-per-call technology so ripe for fraud artists in the 1980s — low start-up costs and the potential for big profits — exist on the Internet as well. [19] Indeed, for $30 a month or less and the cost of a computer and modem, scam artists can be in business on the World Wide Web, taking orders from anywhere in the world. [20] There is nothing new about the kind of fraud. What is new — and mind-boggling — is the size of the potential market, and the relative ease and low cost of perpetrating a scam. [21]

Detection and Enforcement

For law enforcement agencies, the emerging technologies present serious challenges in detection, apprehension, and enforcement. With a telephone or an online link, fraudulent marketers can set up shop quickly and cheaply, and move on without a trace. The fraudulent telemarketer, for example, can use pay phones and obtain payment through wired funds or credit card cash advances — with no listed or traceable phone, no mailbox, and no office. For the cyber scam artist, it may be even easier to escape detection. Once transactions can be completed online routinely — with cyberscammers getting consumers' money in seconds — the challenges for law enforcement will be even greater. [22]

As the number of media sources grows, so does the job for law enforcement and industry self-regulating groups. Monitoring television advertising has become more difficult with the surge in the number of channels and the number of infomercials. [23] Monitoring the Internet will be an even tougher job. Yet, it is crucial, because new entrants may have little knowledge of their legal obligations under consumer protection laws. [24]

Legal Issues

In the new marketplace, law enforcement agencies will have to contend with a daunting array of legal issues. Interstate and international electronic communications raise new concerns about the choice of laws and jurisdiction. Any global consumer transaction may be subject to varying legal standards for advertising, including claim substantiation, the use of sweepstakes, and rights to privacy.[25] The increasingly blurry line between advertising and content on television and the Internet also presents potentially thorny legal problems. [26]

Online transactions raise a host of issues about the relative legal responsibility of participants in the new marketplace, such as service providers, home-page sponsors, and bulletin board operators. [27] Legal issues also may arise over new types of activities, like Web sites that directly interact with children and solicit information from them. [28] It may be necessary to reassess the applicability of some consumer protection standards in a new environment where consumers have more access to detailed product information. [29]

Limited Resources

While consumer protection problems are growing in number and complexity, government resources at all levels are shrinking. [30] Indeed, as one top law enforcement official put it: It's not the telemarketing scam artists at the card table anymore. "They tend to be in nice big area rooms with computer screens at their tables. I'll tell you who's at the card table. It's law enforcement." [31]

The challenge for law enforcement agencies is to get the job done with fewer resources. They need to work smarter and more efficiently, maximizing their impact by working collaboratively with other agencies and the private sector. They also need to make greater use of the new technologies to combat fraud and educate consumers.

Privacy

While the emerging technologies may enhance consumer sovereignty, they may rob consumers of control in other areas, such as the collection and use of personal information. Advances in computer know-how already have enabled the collection, storage, and retrieval of enormous amounts of data on individual consumers without their consent. [32]

It is likely that data collection will expand. Surveillance on the Internet can be all-inclusive: every movement can be tracked, including sensitive information about where consumers are shopping, what they're looking at, what they eventually buy, who they talk to, and for how long. [33] While the parties to a transaction may have access to this data, so will Internet service providers, online services, and electronic payment providers. [34]

Information "Have Nots"

It is predicted that the new technologies will become more affordable, and ultimately, more widely accessible. [35] The growth in the use of the Internet may signal this trend. [36] Certain segments of the population, however, may miss out, either because they do not have the money to buy high technology items, [37] or they lack basic skills to use them. Without access to the new technologies, the poor, the under-educated, and minority groups in rural areas and inner cities may become a class of information "have nots." [38]

Anti-Competitive Behaviors

In the rapidly changing high-tech marketplace, concerns exist about concentrations of power by the mega communications companies; [39] non-competitive "cooperative pricing" on the Internet where rival sellers will have total access to their competitors' prices; [40] and the creation of online entry barriers through search engines designed to push competitors out of the way. [41]

On the other hand, the new technologies may push the door open even wider

to competition, lower prices and a proliferation of new products and services. [42] The Internet, with almost no barriers to entry, may create the most highly competitive marketplace of all. [43]

TOWARD A NEW CONSUMER PROTECTION AGENDA

Working Together

Emerging consumer protection issues call for creative law enforcement approaches that do not unnecessarily restrict legitimate business practices, that promote the free flow of information, and that encourage the development of new technologies. [44] To strike the right balance, it will be important to continue the kind of dialogue that took place at the FTC's fall hearings, and for all interested groups — industry, government, consumer groups, and academics — to work together to find solutions. [45] Recent cooperative efforts in tackling pay-per-call fraud and telemarketing fraud can serve as useful models for solving the new problems identified during the hearings. [46]

The Role for Law Enforcement Officials

Law enforcement agencies at federal, state, and local levels must continue to focus on fraud and deception in all forums. Enforcement resources should not be too narrowly focused on the new technologies; rather, they must be spread broadly to catch and deter the most serious wrongdoers wherever they work. [47] The FTC must maintain an active enforcement presence in the area of deceptive advertising — in both the print and electronic media — to assure that current standards are maintained. [48] In addition to its role as a vigilant law enforcement agent, the government should encourage self-regulation by the private sector. [49]

Industry's Part

The private sector can address many of the concerns consumers have about the new technologies. It has the "know how" to find solutions that work without unduly burdening their operations. For example, industry can continue to develop

technological solutions that allow consumers to block receipt of certain kinds of information and let them know who is calling. [50] Private groups may be able to develop pro-competitive certification standards that help assure consumers of a seller's adherence to consumer protection principles; they also may be able to devise ways to resolve disputes using the new technologies. [51]

Self-regulation offers flexibility in solving problems. It provides an opportunity to proceed slowly in difficult areas like privacy; to build a consensus about norms of behavior for an industry; and to experiment with different approaches. [52]

Further, self-regulation is in the business community's best interest because consumers will use only the new technologies in which they have confidence. [53] Without self-regulation in the pay-per-call technology, for example, scam artists gained the upper hand early on and nearly ruined the medium for legitimate use. [54] In short, if consumers see cyberspace as "Dodge City," they will stay away from it. [55]

Finally, self-regulation can ease the burdens on law enforcement agencies. If industry is effective in promoting general levels of consumer protection, government agencies can focus their resources on fraud and deception. [56]

However, it must be remembered that self-regulation can be uneven. [57] It generally needs a strong law enforcement presence, and constant renewal and modification to meet the challenges of a rapidly changing marketplace. [58]

Consumer and Business Education

Consumer education fuels enlightened decision-making. This critical, albeit expensive, element of the consumer protection agenda should come from a variety of sources — industry, consumer groups, schools, and government agencies — working independently but cooperatively. [59]

For government, a good place to start is right at home. Government agencies

must become more savvy about the new technologies and the consumer protection problems associated with them. In addition, they must learn how to use the technologies to disseminate their messages more effectively. [60] On the Internet, for example, it is possible to deliver consumer education messages in real time — that is, just as a consumer is about to make a purchase. This could be a giant step forward from traditional printed brochures and public service announcements. [61]

At a time when consumers are being bombarded with information, getting messages through can be difficult. [62] And in some areas, such as telemarketing fraud, consumer education messages must change how people behave [63] — a daunting task. In the end, even the best consumer education cannot be effective by itself.

Self-Help

The new interactive technologies will offer interesting opportunities for consumer self-help. But consumers need to be educated and encouraged — and the technologies need to be developed — before any self-help measures can flourish. [64]

NEXT STEPS

What's ahead? Government, industry, educators, and consumer groups are not yet sure, but none of them wants to be left behind. They are entering the emerging marketplace with cautious optimism. They are looking forward to more and better information, bigger markets, increased competition, and new opportunities for partnerships. Yet they are fully aware of the risks: new versions of fraud and deception, a world-wide stage for scam artists, and less privacy — at a time when there are fewer human and financial resources to address them.

TECHNOLOGIES ON THE MOVE

Many experts predict that the telephone, the television, and the Internet will evolve, converge, and take on a new look. The familiar media still will be around, but may evolve into nearly unrecognizable tools that will energize the marketplace in new ways.

THE TELEPHONE

The expansion of the telephone from just a simple medium for personal conversation into a global platform for commerce is a key technological development in the new marketplace.

Now a medium for digital as well as verbal communication, the telephone is an important vehicle for buying and selling entertainment, information, and other products and services. For example, consumers now can listen to and order compact discs and other recorded music simply by calling an 800 number. [65]

Indeed, the telephone infrastructure supports a large and still growing segment of the U.S. economy. The fact that it relies on the old-fashioned advantages of telephony — ease of use, affordability, security, and reliability — is particularly noteworthy. [66]

It is no surprise that the telephone is nearly ubiquitous. Consumers like it because it is familiar, easy to use, convenient, inexpensive, reliable, secure, and private; [67] marketers like it because it offers one-to-one personal communication that can be tailored to consumer interests and concerns. [68]

Since the 1970s, advances in telephone technology have spurred the use of the telephone as a marketing tool. [69] Digital technologies are reconfiguring old copper telephone lines to carry huge volumes of information at extremely high speeds. [70] Telephone wires already are carrying full motion video. [71] Commercial transactions are taking place over these same wires using new "smart card" technology. [72]

The Telemarketing Industry

Forty or 50 years ago, when telephone commerce was new, consumers generally were so pleased to hear from a telemarketer that he had to work to conclude the calls. [73] Today, however, many consumers regard the high volume of telephone solicitations as an irritation and an invasion of privacy.

Concurrent advances in database and telephone technology fostered the growth of an enormous telephone marketing industry. [74] Indeed, telemarketing is the lifeblood of many companies. At least one major long distance company says its sophisticated telemarketing sales program is responsible for its rapid expansion. [75]

In addition to being a boon for business, telemarketing offers consumers convenience — the chance to buy a wide range of goods and services from their homes. [76] However, some telemarketers warn of a danger of "over fishing" their market. [77] If a negative image of telemarketing gets lodged in the public mind, consumers may stop responding to telemarketing solicitations. Support may grow for the same kinds of strict telemarketing laws and regulations that some foreign governments have. [78]

The Pay-Per-Call Industry

The pay-per-call industry uses 900-number technology to market entertainment and information services. [79] Once considered a business with enormous potential, the pay-per-call industry has yet to meet expectations, largely because it was tainted early on by scam artists who adopted the technology in large numbers. Increasingly, however, the legitimate pay-per-call industry is offering business-to-business and business-to-consumer services, and major corporations are turning to pay-per-call services to replace toll-free 800 number operations. [80]

Like their counterparts in the telemarketing business, pay-per-call industry representatives rank convenience as one of their industry's top benefits for

consumers. The 900 numbers offer consumers a quick and handy way to access information and entertainment services. In addition, pay-per-call service is available in virtually all homes, not just those with personal computer systems or those that subscribe to costly electronic information services. [81]

Consumer Protection Issues

Telemarketing Fraud

The elements of consumer fraud are the same today as they were in the days of face-to-face snake oil sales. Today, however, fraud is perpetrated on a massive scale over telephone lines. What is different about phone fraud is that the technology enables the con artist to scam many more consumers — and to hide the essence of the fraud because the consumer can't inspect the goods.

Many big telephone scams are low-tech; [82] they use psychological tactics that play on the fears and hopes of the victims. Increased economic pressure, stagnant personal income growth, and a sense of powerlessness also make some consumers susceptible to fraud. [83] Sweepstakes, lotteries, and "get-rich-quick" schemes offer opportunities to ease financial strains, [84] and the techniques used by fast-talking scam artists are smooth enough to fool even savvy consumers. [85] Indeed, while older people are most often the victims of telemarketing fraud, [86] no demographic group is immune: doctors, lawyers, accountants, and corporate presidents of all ages are among those who have been scammed. [87]

More sophisticated technology and a global marketplace will make it more efficient for con artists to defraud even more consumers. [88] Fraudulent telemarketers use new high-tech tools to develop sucker lists with names of people who have "bitten on" scams before. [89] Telemarketers also are expanding their operations into foreign countries. The new technologies make it as easy to telemarket from Canada as from any one of the states. [90]

Pay-Per-Call Deception and Fraud

With low entry costs and the promise of big payoffs, the pay-per-call 900-number industry has been a powerful magnet for scammers. The typical deceptions include:

- advertisements that do not fully disclose the price of calls;
- useless introductory information designed to drive up the costs of calls; and
- failure to provide recourse for consumer complaints or inquiries. [91]

To escape U.S. law enforcement, 900-number crooks have re-routed their telephone calls to networks in foreign countries. [92] Now, they can direct a call from Kansas through Sao Tome (a small country off the west coast of Africa) to New York "in the blink of an eye." [93] Newspaper ads for pay-per-call services may list local or toll-free telephone numbers. When consumers call, they are invited to make a second call to an 809 area code number. Unaware that they are now making an international call, consumers believe that they are being charged 15 cents a minute when, in fact, they are being charged $15 a minute. [94] At the end of the month, consumers are surprised to receive thousand-dollar phone bills, which, if unpaid, could cost them their phone service. [95] The growth in international pay-per-call services has been staggering, with four to six million minutes of U.S.-based telephone calls a month being placed to services based in only five countries overseas. [96] The annual profits for international pay-per-call operations are now estimated at $250 million. [97]

Still Ahead: Challenges to Law Enforcement

The growth in telephone fraud poses many challenges for law enforcement agencies at a time when their budgets are especially tight. New technologies allow con artists to avoid physical locations that can be detected by law enforcement agents. [98] Working alone, the cons operate without a fixed address, office, or even telephone number by using pay phones and convincing victims to make instant wire transfers, ATM transfers, or credit card cash advances wired to

convenience store outlets. [99] This so-called "phantom phone fraud" is almost impossible to monitor [100] because scam artists can "cover their moves" by leaping — technologically — from place to place when they really are "around the corner."[101]

Law enforcement agencies also are challenged by new payment systems that transfer funds instantaneously. While the technology — and its resulting efficiency — makes consumers' lives easier, it also benefits scam artists by making it easier to collect consumers' money before the consumers realize they have been scammed. [102]

Detection, apprehension, and enforcement become even tougher when fraudulent telemarketers move abroad. [103] The global market may be a business reality; but for law enforcement agencies, the world marketplace remains fragmented, making it more difficult to stem — let alone prevent — consumer injury.[104]

Tackling Telephone Fraud and Deception: A Game Plan

It is in the interest of legitimate business to see that telemarketing works fairly.[105] Government, too, seeks solutions that recognize the legitimate concerns of this industry, keep regulatory burdens to a minimum, and prevent consumer injury.[106] Recent examples include the Commission's Telemarketing Sales Rule and its 900-Number Rule. [107]

All stakeholders — government, industry, and consumer organizations — must work together to address the many consumer protection problems in the use of this technology. [108] Tackling telephone fraud, for example, requires a multi-pronged approach — government regulation and law enforcement, business self-regulation, and consumer education. [109] One part of this framework alone — for example, self-regulation without consumer education or enforcement — will not have much impact on the fight against fraud. [110] The collaborative efforts involved

in the Commission's recent rulemakings to stop telephone fraud and abuse may provide models for addressing the next generation of consumer protection problems. [111]

Law Enforcement — National and International Cooperation

A principal role of law enforcement agencies is to deal with the increasing volume of phone fraud. [112] To maximize limited resources, it is more important than ever that local, state, and federal agencies work together, as well as with foreign governments. [113] They must continue to share expertise [114] and data, and redouble their collaborative efforts in carrying out major law enforcement initiatives. [115]

With the increasing problem of cross-border telephone scams, there is a need to educate law enforcement agencies and judges around the world about the importance of this problem. [116] U.S. agencies must work with other countries and develop better means of communication, to the extent possible, to facilitate cooperative relationships among law enforcement agencies. [117] In addition, law enforcement entities throughout the world must address the transfer of property by con artists to foreign jurisdictions as a way to avoid asset seizures. [118] In sum, law enforcement must become international to remain effective. [119]

Private Sector Initiatives — Early Self-Regulation

Industry has a responsibility and a strong interest in developing and adhering to self-regulatory regimes that reduce fraud. [120] Bank card companies, for example, bear much of the cost of telemarketing fraud [121] and cannot wait for law enforcement agencies to solve the problem. [122] Similarly, legitimate telemarketers, hurt by the crooks who make consumers skeptical of all telemarketers, want to help the public learn to tell the difference. [123]

The history of the 900-number services industry should alert all industry members to the hazards of neglecting self-regulation. In the 1980s, the industry failed to crack down on bad actors. The result: consumer complaints, negative

media attention, and ultimately, comprehensive government regulation. The industry's failure to take an early and pro-active role in helping to solve the problem allowed the con artists to take over. Pay-per-call, which had grown quickly to a billion-dollar industry, lost $400 million in one year. [124]

Some self-regulatory programs already are in place:

- The Direct Marketing Association's (DMA) mail and telephone preference service allows consumers to write to a central address to remove their names from promotion lists; companies maintain their own do-not-call lists that they check regularly against DMA's. [125]
- Notice and opt-out cards appear as inserts in magazines and bills, so that customers can indicate they do not want to be called. [126]
- The bankcard industry contacts consumers under certain circumstances to verify a transaction. [127]
- The bankcard industry supports careful merchant signing procedures, monitoring, and education to combat "laundering" of credit cards by con artists. In addition, the industry supports extension of deadlines for credit card holders to report fraud. [128]
- Major U.S. long distance and local telephone carriers do not collect payment from consumers who have been deceived; some local telephone companies do not terminate phone service for non-payment of legitimately disputed charges. [129]
- The American Telemarketing Association (ATA) is developing a certification process to hold member telemarketers to stringent standards. [130]
- The DMA and the ATA have ongoing programs to educate and monitor their members and plan to institute a formal program to encourage the 11.1 million employees engaged in direct marketing to be vigilant about telemarketing fraud and active in reporting it. [131]

Companies that inadvertently assist fraudulent telemarketers, such as banks, credit card companies, shipping companies, mailbox companies, and wire transfer companies, also can play a part in these protection efforts. Once aware that con artists are using their services, they can cut them off. [132]

Technological Solutions

Technology also must be part of the solution to consumer protection problems. Among the possibilities:

- An automatic call back feature so consumers can verify who called them.[133]
- An electronic filtration device to help consumers distinguish between legitimate telemarketers and crooks. [134]
- Caller ID to allow consumers to manage a list of telephone numbers they will not accept calls from, or that they will only accept calls from. [135]

Consumer Education

Consumer education can help stop the growth of telemarketing fraud — although it can be a daunting task to get an effective message through to those who are most susceptible. [136] A recent study by the American Association of Retired Persons revealed that older people — who are especially vulnerable to telemarketing fraud — need clear and concise triggers to help them recognize telephone scam artists and distinguish them from legitimate telemarketers. Mere awareness that scams occur is not enough: the study showed that many older victims already were skeptical of telephone solicitations when they were scammed.[137] Older consumers need help developing skills to deal with all telephone solicitors, and saying no to — or hanging up on — those they really do not want to do business with. [138]

Consumer education can be expensive, and broad dissemination is difficult. Even so, it is important to keep consumers abreast of the risks they are facing in the changing marketplace. [139] Government and industry should be partners in these

education efforts. Industry knows how to reach its customers best. It also is in the best position to tell vast numbers of consumers how to separate the legitimate offers from the fraudulent ones. [140] Many industries already are involved in doing so.[141] They need to continue, and others need to join in.

TELEVISION

Television has changed dramatically since the 1960s. Consider these statistics:

- Americans had access to almost 1900 local television stations in 1995, more than three times the number available in 1965;
- An estimated 63 percent of homes received cable television in 1995, up from five percent in 1965;
- The average household received 41 channels in 1995 — 34 more than in 1965;
- More than two-thirds of American households had more than one television in 1995; in 1965, only 28 percent had more than one TV; and
- Nine out of 10 households had remote controls for their televisions in 1995; more than eight out of 10 had video cassette recorders. In 1965, neither technology was available. [142]

The television landscape has been forever changed. The number of local stations has skyrocketed, and technological innovations have given consumers more control over how and when they watch television. More outlets for programming and advertising are enhancing consumer and advertiser choice. In addition, audiences are becoming more fragmented as viewers time-shift, zip, zap, and graze at their multiple sets, video cassette recorders, and remote controls.

Changes in technology also have fueled advertising and marketing innovations. Television advertising dollars now are split among six broadcast networks, which share 33 percent of the ad dollars, and cable and syndication,

which share 14 percent. [143] Only 25 years ago, three networks — ABC, CBS, and NBC — shared 46 percent of total TV ad dollars. [144] The relationship between programming and advertising also has changed. In television's early days, advertisers produced both programs and ads. The line separating one from the other often was blurry. It became sharper as the networks produced the programs and advertisers the commercials. Recently, however, with the development of infomercials and shopping channels, the line is blurring again. [145] Indeed, soon there will be three cable television channels devoted entirely to paid programming. [146] The convergence of television and personal computers may further cloud the distinction between advertising and programming content.

Consumer Protection Issues

An Advertising Avalanche

The explosion in television outlets has meant an increase in both the number of new avenues for advertising and the number of ads for law enforcement agencies to monitor. In addition, ads may use new technology to portray products in a way that may deceive viewers. For example, advances in video technology, such as digital manipulation, raise particular concerns in the area of children's advertising. [147]

Who will keep track of all of this new advertising? In an era of reduced human and financial resources, the federal government may not be able to adequately monitor this avalanche of new ads. [148] In any event, monitoring alone is not enough to protect consumers from deceptive ads. [149]

Uneven Review Procedures

While networks and network owned-and-operated stations tend to have sophisticated procedures to screen for deceptive ads, independent and cable stations have varying levels of review. [150] In one recent survey of 30 cable networks, only four percent required advertisers to substantiate claims. [151] With

more stations and networks available, consumers may not always know which outlet they can trust. [152] While industry groups are becoming more active in the screening arena, it is clear that more efforts are needed. [153]

Blueprint for Protection

Concerted Efforts

As more television outlets for advertising appear, old-fashioned types of deception will proliferate. [154] Simply finding all the ads that are being disseminated is challenging. [155] Surely, no one entity can monitor them all. All facets of the television industry — advertisers, advertising agencies, the media, trade associations, and self-regulatory organizations — must work alongside government to ensure that consumers are protected from deceptive ads.

Stepped-up screening

Self-regulation by all members of the television industry is crucial to reducing deceptive advertising. However, since the strength of these self-regulatory measures varies widely, a more uniform effort across the industry is needed. [156]

Stronger screening efforts by new members of the television industry are especially important. [157] All members of the industry should work to ensure that the existing resources become better known — through challenges brought to the National Advertising Division and the Children's Advertising Review Unit of the BBB, to networks, and to individual stations. [158] Industry members should urge trade associations to establish review mechanisms and guidelines. [159] They also must lend financial support to self-regulatory efforts and related activities, including educating new businesses, media, and consumers. [160]

Government Involvement

Effective industry self-regulation is not a substitute for government oversight. [161] Indeed, self-regulation has inherent limitations, and certain issues simply are not suited to self-regulation. But government can encourage self-

regulation. Indeed, the power enjoyed by industry self-regulation groups ultimately comes from the existence of the FTC and its enforcement powers, which serve as a backstop to self-regulatory measures. [162]

The FTC's primary consumer protection role is to stop the fraudulent and deceptive marketers who operate outside the legitimate field. [163] It also must address novel deception issues. [164] At the same time, it should do its job in a way that avoids unnecessary regulatory roadblocks. [165] This is an important goal under any circumstances, but may be particularly critical at a time when television is in transition. [166]

CYBERSPACE

Newest Technology

A Brief History

By any measure — traffic, number of users, money spent — the growth of the Internet has been phenomenal. [167]

Originally a military communications system, the Internet was expanded to include research institutions. [168] Private entities were permitted to offer commercial access to the Internet in 1992, and by 1995, the government's involvement was phased out. [169] World Wide Web technology, which made the Internet useful in an everyday way, appeared around 1992. [170]

The Internet now is an interconnected web of 60,000-plus computer networks in over 90 countries that routes communications among users. The path of any individual Internet communication is not predetermined or controlled: indeed, the system automatically routes around system outages. Information posted in one location is accessible everywhere simultaneously. [171]

From the consumer perspective, 1995 was the year the Internet "arrived." More affordable high-speed multimedia home computers, faster modems, and more sophisticated software compressed the time needed to access information

and download files. As technology advances, Web sites will go beyond text, graphics, and photos to incorporate audio and video clips. [172]

For Consumers The Internet provides consumers with unparalleled access to information. An online consumer in the market for a new car, for example, will find "virtual showrooms," discount broker ads, classified ads, buying guides, consumer protection information, and "tips" from self-styled experts on the tricks of negotiating the purchase. [173]

Ideally, interactive marketing puts consumers in control, [174] enabling them to determine what information they access. [175] This may lead advertisers to create communications that entice consumers to view their ads and to act more like door-to-door merchants, seeking a one-on-one dialogue with consumers and potential customers. Unless advertisers offer accurate information tailored to the consumer's needs and desires, the consumer may not "invite" them in. [176]

While the new consumer sovereignty may be liberating, information overload may make informed choice particularly difficult in the online marketplace. [177] Today's electronic consumers have little control over unsolicited postings that flood electronic mail boxes, newsgroups, or other bulletin boards. If not addressed, such "spamming" practices could hinder the healthy growth of the Internet. [178]

For Marketers Interactive technologies demand active, deliberate user participation and provide an opportunity for real-time, two-way communication between an advertiser and a consumer. [179] Cybercommunications fuse traditional marketing techniques, borrowing from advertising, promotional marketing, public relations, newspaper inserts, and catalogs.

Electronic marketers instantly may access customers from Vermont to Vietnam. [180] The interactive ad can become a "virtual" store, where an advertiser completes the sale — and sometimes even the delivery of its products or services — online, blurring the lines between communication, distribution, and sales, and

perhaps redefining advertising and marketing as we know them. Any product or information that can be digitized — software, databases, everything in print, sound, or pictures — can be delivered online. [181]

It doesn't take much to set up a base of operation on the World Wide Web: a personal computer, a modem, a little software — all of which can be bought new for under $1000 — and an Internet connection, which costs $30 or less a month. [182] Indeed, cyberspace may be a better market for alternative voices or niche markets than either cable or broadcast, in part because there is no "cyber-gatekeeper" with the power to determine who can, or cannot, market online. [183]

On the other hand, simply having an online presence does not assure success. Consumers must be made aware of the site, and enticed to visit. [184] Power-house brands and the leading sellers in traditional electronic markets may be able to dominate cyberspace — the former because they are in a better position to publicize their online sites in other media and attract more traffic, [185] the latter because of their greater entertainment-related resources.

Online technology enables marketers to track a consumer's behavior throughout an interaction [186] and, therefore, permits them to identify new customers at very little variable cost. [187] Although this raises privacy concerns, it allows marketers to better understand the user's needs and desires and to screen out irrelevant data.

Where Are We Now?

Most major advertisers have Web pages on the Internet, and many include their Web site addresses in their TV and print ads. [188] In turn, some advertising agencies have entered the world of interactive advertising, creating Web sites and CD-ROMs, programming for online service providers, and even advertising in "digitzines" (online or CD-ROM magazines). [189]

Yet many current online advertisers are still in the dark about the return on their investment. Most investments in Internet-related activities are in research

and development, with the value of this new advertising and marketing channel still to be determined. [190] For some companies, an Internet site has more to do with creating a perception in the target market that the company is "cool" or "hip" than anything else. [191]

Where Are We Going?

While it seems certain that commerce on the Internet will grow dramatically in the next 10 years, few are willing to predict exactly how the new marketplace will develop. However, one witness at the hearings suggested that the market might take three different directions.

Under his "Yahoo Scenario," [192] the Internet would be dominated by mega-advertisers with fabulous Web sites designed to "catch" the consumer. These sites would be promotional playgrounds or sponsored worlds that would hold the consumer's attention by changing constantly. Advertisers would enter into exclusive agreements with big-name celebrities to connect with their fans at the advertiser's online site. Joint advertising promotions would proliferate; consumers would be pointed from one offer to the next; and the role of content providers, if they existed at all, would be to catch a particular demographic segment and then bounce them to an advertiser's Web site.

Under his "Disney Scenario," [193] mega-entertainment providers would dominate the Internet. Traditional media-advertiser relationships would be transferred to the new medium of cyberspace and content would be the magnet to attract users. Large, value-added media worlds would merge, often replacing the ones people know. While thousands of content providers might exist, only a few would dominate, offering elaborate multimedia sites where consumers gradually would spend more time. These sites would be creative empires, providing personalized entertainment and information value. Marketers would nest in these mega-brand sites, staking out territory like they do at the Olympics. Only the biggest brands would have the resources to buy this presence, and exclusive

relationships could arise between marketers and content providers. Here, marketing messages and entertainment content would blend into a seamless experience. [194]

Finally, under his third scenario — "The Net as a Tool" [195] — consumers would not view the Internet as a source of entertainment or fun, but rather as a tool to accomplish mundane tasks more conveniently and cheaply than they might through conventional means. The dominant marketing application for the Internet would be customer service, similar to services now provided via 800 numbers. Consumers would go online to research products and prices, pay bills, register complaints, download a prospectus from a mutual fund provider, or check their bank balance.

Bumps in the Road

Some challenges must be addressed if the electronic marketplace is to realize its full potential.

Legal Uncertainties Because a message on the Internet is immediately accessible worldwide, it is potentially subject to a variety of laws governing advertising methods. Which country's laws will prevail? [196] Enough areas of uncertainty exist to cause concern about conflicting liabilities among online players.

The appropriate treatment of intellectual property in cyberspace is another area of uncertainty. International laws in this area are inconsistent, and have caused conflicts in GATT and treaty negotiations for years. Some would say that intellectual property owners must be assured that their valuable property is not at risk, and that their credibility will be protected. [197] Others assert that overbroad intellectual property protection will stifle innovation on the global information infrastructure. [198]

Other areas of uncertainty include the allocation of liability among advertisers and online service providers for copyright infringement, libel, and fraud, [199] and an

advertiser's liability when its messages are duplicated and re-worded on the Internet.[200] The legal responsibilities of parties that sponsor Web sites or online bulletin boards also have yet to be clearly defined. [201]

Payment Security Payment security issues continue to be a major concern for Internet marketers and users. In a recent survey, the vast majority of adult online users said that it is too easy for a credit card number to be stolen if it is used on the Internet, and that more Internet security is needed. [202]

There still is no widely used, secure way to pay for goods and services on the Internet, although such a system is under development. [203] The conventional wisdom is that the Internet's potential as an electronic marketplace will explode when reliable payment mechanisms are established. This expansion of electronic commerce could parallel the growth in catalog sales during the last 10 years. [204] Then other problems may arise, however, involving authorization, rights of rescission, charge backs, and cancellations. [205]

Consumer Confidence The commercial health of cyberspace will turn on consumer confidence. [206] Doubts and insecurities could keep people away, capping the growth of the medium. [207] Lawlessness, or even the threat of lawlessness, could dramatically limit the usefulness of the Internet to consumers.[208]

Businesses, too, want consumers to feel "safe" while doing business in cyberspace and are rooting for this electronic medium to realize its potential. [209] It would be a disaster for advertising in the cyberworld to lose credibility because of the ease of disseminating false claims. [210] To assure consumer confidence, brand names — those that inspire credibility and trust — probably will continue to be important on the Internet. [211]

Access to the Technology According to the testimony, the new marketplace must be widely accessible to consumers. Some suggest that access to online services is expanding. The Internet now is open to anyone, not just those

associated with a university, research institute, or the government. Competition has pushed prices down, and commercial online services are moving into rural areas. More affordable Internet access may have to do with the fact that phone service — the way most users access the Internet — has been highly regulated. [212]

In addition, advertising could speed the accessibility of the information highway, just as it supported the development of radio and television, and brought news and entertainment to a bigger audience. [213] The traditional advertiser subsidization of content may change, depending on how the Internet develops as a marketing tool. [214]

However, the new information age may produce "haves" and "have nots"; information "have nots" are likely to be located in rural areas and the central cities, and to be less educated, members of a minority, and poor. [215] No one knows how the universal service question will play out in cyberspace, but one way or another, its resolution will have an important impact on electronic commerce.

Fraud and Deception in Cyberspace

Much of the fraud online will continue to be old hat. Scam artists are able to operate much as they have in the past, preying on greed, loneliness, naivete, and other human frailties. [216] The Internet offers crooks some powerful advantages, however. It enables them to identify potential victims more efficiently by tracking and profiling a consumer's Internet activity. [217] It also offers low operating costs, anonymity, and instant access to consumers worldwide. [218]

Ease of entry means that the Internet, like the telephone, is fertile ground for fraud. But consumer damage in cyberspace can be more significant and happen faster. [219] Entire transactions, from offer and acceptance to payment and perhaps delivery, can be accomplished with just a few clicks. [220]

Once a secure online payment system is in place, the sheer volume of transactions will present a real challenge to law enforcement. [221] Electronic

payment systems could reduce or eliminate delays or cooling-off periods available to consumers under conventional payment systems such as personal checks and credit cards. [222]

Cyberspace also makes it more difficult for law enforcement officials to identify and locate perpetrators of fraud. The technology helps scam artists escape detection, for example, by allowing them to change their name or persona in cyberspace. [223]

The ease of electronic communication often means that there are no boiler rooms to raid, no offices or warehouses to check, and no employees to pursue. [224] And given the transitory nature of much online information, even the fraudulent come-ons may not exist long enough for officials to obtain copies. [225] New payment systems may increase the difficulties associated with investigating fraud by eliminating the need for information such as postal addresses and telephone numbers — information now used by law enforcement officials to locate crooks. [226]

Cyberspace lacks physical boundaries, creating both practical and legal issues for law enforcement. What about the crook outside the U.S. who designs a Web page to pedal pirated U.S. software? Does the United States have jurisdiction over the foreign seller if a U.S. citizen accesses the Web page and places an order? How do U.S. authorities find the seller? Will the host country cooperate? If not, is there a technological way to block that seller from sending e-mail into the United States or to block U.S. citizens from accessing the seller's Web page? [227]

Cyberspace users constantly transform the medium. The combination of unstructured input and ever-evolving technology means that law enforcement officials may have to run to keep up. [228]

Digital technology offers new opportunities to mislead consumers by tampering with logos and trademarks online. Legitimate advertisers' credibility

can be harmed by the unauthorized use of forged or reformulated advertisements.[229] Web site developers can manipulate data to ensure that a particular site is included on the "hit lists" produced by online search engines, even when the search topic is unrelated. This manipulation, similar to traditional bait-and-switch tactics, is designed to catch unsuspecting consumers.[230] The popularity of a Web site can be inflated through software that quadruples the actual number of "hits," or access requests, received by a site.[231]

Online advertising aimed at children is among the special problems posed by the Internet. Concerns focus on the solicitation of personal information from children, the blurring of advertising and entertainment, and the creation of sites that offer direct interaction with products or "spokescharacters" or encourage children to spend unlimited amounts of time.[232] Direct marketing of products to children through "electronic boutiques,"[233] and children's access to sites advertising tobacco or alcohol also are areas of concern.[234]

The Search for Solutions

Law Enforcement Agencies The online marketplace cannot be the "Wild Web"; it must offer some measure of meaningful consumer protection to succeed.[235] Enforcement agencies must adapt quickly to this new medium. They must become technically literate to identify problems and to understand the level of protection online users want and expect.[236] Yet it is not clear how best to afford consumer protection to online users[237] especially in light of the constantly changing nature of cyberspace.[238]

Preventing or dealing with online fraud requires monitoring and enforcement, and may even call for new legislation and rulemaking.[239] While efforts by law enforcement agencies to focus on fraud are important to the success of the medium, substantially more resources may be needed to do the job right. Otherwise, agencies could be overwhelmed by the caseload.[240]

To deal with cross-border Internet fraud, the U.S. can, in appropriate cases, seek help from, or offer help to, foreign governments under existing or new legal assistance treaties. [241] It also may be necessary to create specialized investigatory and enforcement institutions, public or private, to seek relief for Internet victims or sanctions against wrongdoers. [242]

The role of law enforcement agencies regarding online advertising aimed at children raises particular concerns. Should a regulatory framework for such advertising be established to ban certain conduct like collecting personal information from children? [243] Or is regulation premature because the advertising industry is moving to deal with this area itself? [244] Are the principles that apply to children's advertising in other media suitable for online advertising? [245] A comprehensive evaluation of children's advertising in the context of cyberspace may be needed. [246]

Business is not the only human activity conducted online. The Internet's potential for communication, research, entertainment, and education throughout the world — and the spirit of its users and its dynamic nature — should not be stifled by over-regulation. [247]

In addition to traditional enforcement, some have urged that the Commission encourage businesses to self-regulate by proposing enforcement or regulatory action, then soliciting industry response. The resulting dialogue between the Commission and industry may lead to innovative solutions and avoid unnecessary government action. [248]

Private Initiatives Self-regulation may offer some of the most promising avenues for consumer protection in this new medium, without inhibiting its development. [249] A number of self-regulatory efforts are underway:

- The National Advertising Division of the Council of Better Business Bureaus currently applies its existing review process to cyberspace advertising and is considering an online certification program. Under this

program, companies that adhere to certain BBB standards and procedures would be authorized to display the BBB logo in their online ads. [250]

- Private businesses might develop to preview or vouch for online sites or goods. Examples include consumer subscription services that publish independently-conducted evaluations of products offered online and companies that sell "consumer insurance" to online marketers. [251]
- The private market also can take on the arbitration of online disputes. [252] To accommodate the global nature of many disputes, hearings can be conducted through computer networks. Under existing treaties, enforcement of arbitration awards is more likely than enforcement of foreign court judgments. [253] Online service providers and Web sites could state "terms of service" specifying the use of such mechanisms. [254]

  One such system is the new Virtual Magistrate service, which is aimed at resolving disputes over messages or information posted in online forums or bulletin boards. [255] A panel of neutral experts reviews disputed material and recommends within 48 hours whether it should be deleted by the forum or bulletin board operator. [256]
- Software filters can be programmed to block access to certain topics or categories of information, and software-based ratings systems are already available to advise consumers about visiting particular sites. [257] Such tools could be crucial for consumers who want to make informed choices about the Internet sites they or their children access. [258]

  One system — the Platform for Internet Content Selection (PICS) — is being developed by a group including online service providers and communications companies in conjunction with MIT's World Wide Web Consortium. The technology standards produced by PICS will be available to any third party — consumer groups, children's advocates, or religious organizations, for example — to design competing systems rating

World Wide Web sites. [259] Consumers could then access or block Internet or Web sites based on the ratings service they choose. [260]

- The online industry may prevent scams by policing itself once key liability issues have been sorted out by the courts or by Congress. For example, service providers might develop a shared list of subscribers or advertisers expelled from one service in an effort to prevent them from jumping to another service. [261]

Joint Private/Public Sector Actions Government, consumer protection advocates, and the private sector must work together to protect online consumers. State and federal regulators already are working with the online services to address current challenges. [262] Information sharing and education are central goals of these efforts. Given the speed with which issues in cyberspace change, law enforcers, online service providers, and consumer advocacy groups might do well to conduct regular conference calls to discuss the latest scams. [263]

Consumer protection organizations can help the Commission's enforcement efforts by serving as an early warning mechanism for scams. [264] There also may be ways to combine the advantages of FTC oversight and private dispute resolution. Indeed, the development of formal mechanisms for deferring to private channels — similar to the federal government's reliance on the securities and commodities exchanges to self-regulate their markets, or the National Labor Relations Board's policy of deferring to collectively bargained arbitration — should be considered. The FTC could decline to consider matters that have not been presented to available private channels, choose to give effect to the decisions of private tribunals, or both. [265]

Consumer and Business Education Education will be crucial in battling the online scams of the future. This task must be undertaken by all the stakeholders — marketers, government agencies, the online industry, consumer advocates, journalists, and online users themselves. The need will grow as the number of

consumers online swells. Consumers will need information about online scams and about the operation of cyberspace itself. [266]

Cyberspace offers unique opportunities to provide more effective, "point-of-purchase" education to consumers. Because an online search for a product will list consumer information sites along with advertising or other sites relevant to the search topic, educators can deliver information when consumers are likely to be most receptive. [267]

The potential to disseminate consumer information when the consumer is interested could be expanded through advertisers' incorporation in their Web sites of cross-links to appropriate consumer information sites. Commercial online services can include pop-up screens or click choices that describe online consumer information resources next to relevant product areas of their networks. [268]

Finally, business education is important, too. Many legitimate advertisers, new to the electronic market, will need information about the norms and requirements already applicable to national advertisers, such as the need for substantiation and the operation of industry review programs. [269]

"Netizen" Self-help "Netizens" — experienced online users — also are an important part of the mix and can play a leading role in assuring greater protection for other online consumers. Knowledgeable netizens can help educate novice users about the operating norms of the online environment. In turn, online users can be a valuable resource for policymakers in determining how to protect consumers online. [270]

Privacy Concerns

Cyberspace may create a new level of consumer concern about privacy:

Imagine yourself in a "virtual" bookstore,[271] *browsing through the books available for sale online. When you make a purchase, you expect that certain personal information — your name, address, and credit card number — will be collected to create a record of the transaction. So far, shopping at the virtual bookstore is no different from the bookstore at the mall, right? Wrong. The owner of the virtual bookstore has access to information about you that his traditional counterpart doesn't have, unless you provide it voluntarily.*

Depending on the software, the owner of the virtual bookstore can track your identity and, by following your "clickstream,"[272] *link you to the books you considered before deciding which one to buy.*[273] *This gives the online bookstore owner access to information about your preferences, interests and lifestyle — even if you do not buy anything.*

Concerns about privacy are not new, [274] but they are mounting. [275] In the online setting, consumers worry about both the amount and the type of information that can be collected, [276] and about the number of different organizations that might have access to it. [277] In addition to those directly involved in an online commercial transaction, many intermediaries may have access to the data exchanged in the course of the transaction, including an online service, Internet service provider, telecommunications company, and electronic payment service, to name a few. [278] Who does have access to personal data? How might they use personal information? [279] Will they misuse the information they obtain about consumers? Will it be possible for people to obtain unauthorized access to consumers' online communications? [280] These concerns, if not addressed, can deter consumer participation in the developing online marketplace. [281]

Potential Privacy Protections

There is much debate about consumer concerns over the secondary uses of information, *i.e.*, the use of personal information beyond the transaction initiated by the consumer. Various approaches have been suggested to address these concerns. One is to give consumers notice of the planned uses of non-sensitive information and an opportunity to request that their personal data not be used in particular ways. This practice, known as an "opt out," places the burden on consumers to prevent additional disclosures of information they have provided. [282] For some, the "opt out" approach is sufficiently protective. [283]

Another approach is to give consumers the chance to "opt in." Under this system, personal information is transferred only with the explicit permission of the data subject. [284] This approach places the burden on business to obtain the consumer's okay prior to secondary uses of personal information.

Others suggest that the principles of contract law can be used to enforce both consumers' preferences about the use of their personal information and marketers' promises about such use. [285] Under this system, consumers and marketers define privacy-related contract terms. The information collector's notice of intended uses of consumer information constitutes an "offer," and the consumer's agreement to the terms of the notice constitutes "acceptance." [286] A business would be liable for breach of contract if it used consumer information in a way that was inconsistent with the privacy terms to which the parties agreed. [287] Although the contract model would reduce the need for government in this area, [288] there is concern that this model may not protect privacy sufficiently, given the inequality of bargaining power between consumers and information-gatherers. [289] Thus, reliance on this approach would require the strengthening of the legal enforceability of privacy promises. [290]

Still another possibility is to use online technology itself to protect consumer privacy. [291] Some suggest, for example, that use of electronic privacy policy

screens would enable consumers to choose, at the beginning of any commercial online interaction, whether and to what extent they would allow the secondary use of their personal information. [292] The screen would inform consumers about an online business's information and privacy policies at the initial point of contact online, [293] and would empower them to make privacy decisions based on the kind of transaction, the services offered in return for relinquishing personal information, and the uses to which such information would be put. [294] In addition, technology standards, similar to PICS, might be developed for privacy. [295]

Nurturing Consumer Trust

Some advocates support government regulation or guidelines to protect consumer privacy online. [296] Others believe it is too early to regulate privacy protection in cyberspace. They argue that there is still much to be learned from the experiences of consumers and industry as the online marketplace develops, [297] and that the private sector should be allowed to experiment with a variety of technological solutions. [298] Existing industry efforts to define ethical uses of consumer information in traditional marketing contexts may be transferable to the online context, in much the same way that mechanisms for business and consumer education, and dispute resolution and redress are transferable. [299] Further, there is concern that government regulation cannot keep pace with the technological advances in this area. [300]

Some urge the Commission to play a role in this area by supporting industry self-regulation. [301] With the Commission's encouragement, a market in privacy protections might develop, with the best schemes emerging as the standards. [302]

LOOKING AHEAD: CONVERGENCE

Some Predictions

Technology is changing so fast that it is difficult to see too far ahead. Even the most dedicated "techies" are cautious about predictions, and for good reasons.[303] Consider these miscalculations:

- Western Union's reaction to the telephone in 1876: "This telephone thing has too many shortcomings to be seriously considered as a means of communication."[304]
- Tom Watson's conclusion in 1943 that the worldwide market could handle "maybe five computers."[305]
- Bill Gates' estimate in 1981 that "640K [RAM] ought to be enough for everybody."[306]

Still, the products now entering the marketplace offer glimpses into the future. They signal an unmistakable trend toward the convergence of communications technologies. Among the latest entrants:

- *Full motion video via super fast telephone lines*. Customers can order a video by phone and play the movie the same way they now use a VCR, with the ability to pause, rewind, and fast-forward. While the movie is being transmitted through the phone lines, customers also can talk on the phone.[307]
- *Internet via cable*. New cable technology can transmit audio, video, and text on the Internet at speeds 50 times faster than over conventional telephone lines. Next year, it may be 100 times faster and eventually, 1,000 times faster.[308]
- *PC-TV*. Employees working at their desktop computers can keep an eye on CNN news or C-SPAN on a small screen in the corner of their monitors and bring it up to a full screen picture at any time.[309]

- *Cable telephony*. Cable can deliver familiar telephone services and offer consumers a competitive alternative to the local telephone company. [310]
- *Digital interactive television*. "Smart" [311] television, delivered via cable, can provide consumers with immediate access to videos, shops, games, and news on demand. [312] With a few clicks of the remote control, consumers can order stamps (which the mail carrier will deliver the next day), visit different stores in the shopping mall, "try on" clothes of varying colors to see how they look on a model, and print the information in color at home. [313]
- *Video conferencing via the Internet.* The Internet will become a new medium for phone calls and provide video conferencing at every desk. [314]
- *Fax and answering machines*. Like typewriters, they will begin to appear at yard sales for $5. [315]

Convergence will involve all aspects of the new technologies — information appliances, communications networks, and repositories of stored information. [316] In the future, it is likely that the networks for telecommunications, computing, and entertainment will be merged. [317]

Implications of Convergence

These combined interactive media will give consumers greater opportunities to tailor news, sports, entertainment, and data to suit their own tastes and timetables. [318] The benefits of the current information technologies — access to information, convenience, choice, consumer sovereignty — will be magnified with the new, merged technologies.

Concerns about these technologies also may be magnified. In particular, convergence may raise new levels of concern about concentrated ownership of these new media [319] and about their availability and affordability to all segments of the society. [320]

The general view is that we are at the cusp of a major revolution [321] and that the technological landscape will remain volatile for years. [322] The changes may have a

profound impact on our lives, in much the same way that other significant technological developments — phones, television, radio, and cars — have affected our society. [323]

It is important to look ahead, even if the outlines of this revolution are not entirely clear, to be aware of its potential benefits and risks. If we keep at least one eye on the future, we can be better prepared to apply the lessons we learn from today's technologies to those that come along tomorrow.

GLOBAL TRADE AND CONSUMER PROTECTION STANDARDS

TOWARD A SINGLE GLOBAL MARKETPLACE

While all the economic trends point toward a single global market, [324] it is still a market that is legally fragmented by national laws and jurisdictional boundaries. [325] This patchwork of laws creates an array of problems. It seriously hinders law enforcement agencies worldwide in their efforts to address the growing problem of cross-border fraud. [326] It also creates obstacles for legitimate businesses engaged in global trade that must incur the costs of complying with a variety of legal standards, [327] and that often face uncertainties about the legal standards that apply to their transactions. [328] These obstacles — which are discussed below — are likely to grow as the world increasingly moves toward a single global marketplace.

The Global Trade Picture

International trade is growing at a phenomenal pace, as trade barriers of all sorts — tariffs, transportation costs, and regulatory restrictions — come down. [329] U.S. exports and imports more than doubled between 1970 and 1994. [330] Since the mid-1980s, foreign investments into the U.S. and by U.S. investors also have more than doubled, exceeding $1.7 trillion in 1993. [331] Worldwide, international trade rose by over 80 percent from 1980 to 1993. [332]

These developments benefit both consumers and businesses. Consumers enjoy broader selections of products and services from around the world, and businesses enjoy access to larger markets and more opportunities to compete. As more companies engage in international trade, however, they face the challenge of having to meet legal standards that vary from country to country. [333]

Divergent National Consumer Protection Standards

While there are broad areas of international agreement on consumer protection

standards,[334] there continue to be significant differences as well — many of them involving the regulation of commercial communications. Areas of differences include:

- Comparative advertising [335]
- Telemarketing [336]
- Alcohol and tobacco advertising [337]
- Environmental claims [338]
- Premiums and discounts [339]
- Claim substantiation [340]
- Sweepstakes [341]
- Food and pharmaceutical marketing [342]
- Energy labeling [343]
- Privacy protection for consumer data [344]

Businesses that market in countries with different legal standards must adjust their promotional material and tailor their sales practices to suit each country. [345] The trade statistics suggest that for many companies, it is worth the trouble and expense. But other companies are discouraged by the costs and legal uncertainties. [346]

There are efforts on many fronts to reduce trade barriers and open markets to enhance the free flow of goods and services. Most important are the international trade agreements that establish frameworks for greater world trade. [347] In addition, governments and international organizations are taking steps to harmonize regulatory standards around the world [348] — a long term goal of the trade agreements. [349] Global business groups also are engaged in "private sector harmonization" efforts. [350]

ROLE FOR THE FTC

The FTC can play a role on two fronts. First, it can be sure that its own regulations do not impose unnecessary burdens on companies that are in — or that want to get into — the global marketplace. Second, it can participate in international dialogues concerning more harmonious consumer protection standards worldwide. [351]

Regulatory Review

Across the board, the FTC needs to review its regulations to assure that they are well suited to the new global marketplace, and adapt them where circumstances warrant. [352] Its initiative to revamp the Care Labeling Rule is an important first step in that direction. [353] The FTC has proposed amending this rule to allow the use of care labeling symbols that would conform with symbols permitted by Canada and Mexico. [354] The result would be a simplified label that would reduce manufacturers' costs and eliminate the need for country-specific inventory — an increasingly significant benefit as trade in apparel and textiles soars among the NAFTA countries. [355]

The proposed rule is designed to achieve two goals: a high level of consumer protection by conveying all necessary information to consumers, and the removal of undue burdens on businesses that can impede trade. [356] The goals are consistent. High U.S. consumer protection standards help maintain high standards for American products and enhance their competitive position in the world marketplace. [357]

Other FTC labeling regulations that may be appropriate for harmonization include: appliance energy labeling, [358] certification of origin requirements, textile and fiber labeling, [359] and "eco-labeling." [360]

Leadership Role in International Forums

The FTC has been encouraged to play a bigger role in the international debates

of both governments and private organizations about more uniform international consumer protection standards. [361] Given its small size and limited resources, however, the FTC may be somewhat constrained in its ability to participate in such efforts. [362]

Still, the FTC can participate by setting an example — as it is doing through its efforts to harmonize the Care Labeling Rule. [363] It also can participate more fully in international discussions of consumer protection standards. [364] Business and consumer groups have encouraged the Commission to be more pro-active on the international scene in promoting both its consumer protection standards and its market-based approach to regulation. [365] In the future, as U.S. consumers and businesses rapidly expand their participation in the global marketplace, it will become even more important for the Commission to devote attention to consumer protection issues worldwide.

CONCLUSION

The new information technologies may change the marketplace in historic and revolutionary ways. By giving consumers access to more information, choice, control, and convenience, they can put consumers in the driver's seat and usher in a new era of consumer sovereignty.

At the same time, the new technologies raise consumer protection concerns about increased fraud and deception, greater invasion of privacy, and risks of anti-competitive behaviors. The challenge now is to address these concerns in ways that preserve the benefits of the new technologies.

There are reasons to be optimistic about finding solutions. First, some of these problems are just emerging and early actions may keep them manageable. Second, there is considerable expertise — in both the public and private sectors — on which to draw for solutions. Third, there are unique opportunities to use the new technologies to provide consumer protection, education, and self-help opportunities.

GETTING AHEAD OF PROBLEMS

Some problems, like fraud on the Internet, are still relatively small when compared, for example, with telemarketing fraud. Cross-border fraud — although especially vexatious — is still a relatively new phenomenon. Privacy concerns, too, may be addressed before they reach major proportions.

Given the rapid pace of change, the window of opportunity to prepare for these emerging challenges may be narrow. Government, consumer, and business leaders need to move quickly. If they do, there is some chance to get ahead of the problems.

Fortunately, both the public and private sectors are in a good position to anticipate the difficulties and to find solutions.

APPLYING LESSONS LEARNED

Although the new technologies raise some new consumer protection challenges, many of the issues are similar to those posed by more traditional marketing tools. Thus, the recent experiences of government, businesses, and consumer groups in dealing with telemarketing fraud, 900-number scams, and deceptive TV advertising are relevant to the emerging issues.

Those experiences show that the crucial elements of an effective and balanced consumer protection program are:

- coordinated law enforcement by state and federal agencies against fraud and deception;
- industry self-regulation and private initiatives to protect consumers; and
- consumer education through the combined efforts of government, business, and consumer groups.

The hearing record is replete with examples of private initiatives: industry self-regulation programs and plans to develop and expand such programs, technology-based consumer protections and self-help opportunities, and commitments to undertake new consumer education programs. These and other initiatives will be crucial in providing consumer protection in the new marketplace.

The Federal Trade Commission will continue to place a high priority on coordinating and participating in joint law enforcement efforts at home and abroad. It also will continue to actively support industry self-regulation and to work with a wide array of organizations in concerted education efforts.

FTC FOLLOW-UP

Next year, the Commission staff will issue a follow-up report on the steps taken to address many of the issues raised at the hearings. The hearings already have spurred a number of innovative consumer protection initiatives by both the private and public sectors, and there is every reason to be optimistic about progress on all fronts in the coming year.

ENDNOTES

1. Gallant 2724; Moore 2342; D. Goldstein 2391. Endnote citations are to the printed record on file at the Federal Trade Commission. The record is also available online at http://www.ftc.gov. A full list of the speakers referenced in the notes can be found in Appendix A.

2. White 2296; Jones 2845. While the costs of gathering and transmitting information are declining dramatically, the human costs of processing it may actually increase. Gertner 2870. Information overload may be partially addressed as sellers reduce their broad-based advertising and target their messages more narrowly to individuals who are interested in their product information. Huyard 2504-05; Nisenholtz 2757-58. This more targeted marketing, however, is possible in part because sellers can draw on vast data bases which, in turn, raise privacy concerns.

3. Barker 2705.

4. Michelotti 2789; Weitzner 2842; Burrington 2854.

5. Moore 2333-34.

6. Huyard 2512; Young 2252.

7. Nisenholtz 2754-55; Andreotta 2493-96; Humphrey 2794-95.

8. Cutler 2373-74.

9. Nisenholtz 2757.

10. Bell 2239-43; Zalewski 2849-50.

11. Levin 3038, 3064; Sackler 2727.

12. Gallant 2702-04.

13. Nisenholtz 2759; Bell 2239-43.

14. Doyle 2518. Also contributing to the growth in fraud are societal changes that may create opportunities for fraudulent practices, *e.g.*, increased economic pressures and lack of personal income growth that make consumers susceptible to get-rich-quick schemes and other frauds. Barker 2626-27; Zubrod 3092.

15. Doyle 2518-19.

16. Harris 3107; Zubrod 3091.

17. Barker 2633, 2636-37; E. Brown 2711.

18. Sloan 2574-85; Doyle 2518; Humphrey 2794-95.

19. Burrington 2553-54.

20. Cole 2803; Doyle 2523-24 (scam artists have been quick to adopt the new technologies, such as computer lists of people to target and computerized dialing systems).

21. Humphrey 2796-97; D. Goldstein 2391; Gertner 2771-73.

22. Barker 2628; Humphrey 2795; Doyle 2524-25.

23. Silbergeld 2366-67.

24. Cole 2804-05; D. Goldstein 2389.

25. Michelotti 2779-80; Goldman 2944; Hendricks 3008-09; Humphrey 2797; Post 2822.

26. Moore 2337-38; Cutler 2377; D. Goldstein 2387-88; Post 2850; Michelotti 2874.

27. An important question is whether this is a new type of market, or an extension of the traditional marketplace. Weitzner 2842 (new market); Nisenholtz 2846-47 (extension of existing market).

28. Center for Media Education, Comment (submitted for the record) 1-3.

29. Michelotti 2779.

30. Moore 2343; Silbergeld 2366-67; D. Goldstein 2388-89; Harris 3134. It is not just the emerging problems growing out of the new technologies that need attention; traditional scams continue and need to be addressed. Jones 2845.

31. Doyle 2529-30.

32. Goldman 3023-24.

33. Goldman 2929, 3023-24; Hendricks 2976-77; Kang 3010-11; Blanke 3014-15; Belair 2991.

34. Kang 2896-97; Plesser 3018.

35. Moore 2338-39. If advertising becomes an important source of funding for the Internet, it can make access to the Net more affordable to consumers. Michelotti 2789. Gallant 2724 (98% of households have telephones, 96% have televisions and 90% have VCRs); Gross 2742 (predicting that Internet will be firmly part of "everyday life" and that people will have computers like they have phones today).

36. Gross 2737-38; Burrington 2853-55; Weitzner 2881-82; White 2297-98.

37. Barker 2705. Consumers are concerned about whether they will be able to afford the new technologies, and whether they will select the right technologies, *i.e.*, those that will be successful in the marketplace. White 2295-98.

38. U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA), Falling Through the Net: A Survey of the "Have Nots" in Rural and Urban America (July, 1995) (submitted for the record) [hereinafter NTIA Study]. The study found telephone ownership is lowest among Native Americans in rural areas, followed by rural Hispanics and rural Blacks. Personal computer ownership is lowest for Black households in central cities and rural areas. The study found that "the less that one is educated, the lower the level of telephone, computer, and computer-household modem penetration." NTIA Study at 3.

39. Kimmelman 2312-13; Young 2261; Nisenholtz 2753.

40. Gertner 2763-67 (other factors, such as ease of entry into the market, may reduce the risk of non-competitive pricing).

41. Post 2851-52. Search engines enable consumers to find Internet sites. If they operate to push some sites to the head of the list of sites or to crowd competitors' addresses off the list, they could impede entry. *Id.* Also see Cole 2859-60 (whether information is provided fairly or unfairly on the Internet may be a major issue for consumers).

42. Levin 3037, 3056, 3078.

43. Berman 2839-40; Sherman 2841; Gertner 2767-69.

44. Young 2257; Moore 2344-45; Sherman 2864; Burrington 2555-56; Comments of J. Patrick Herold and John K. Lopker, Federal Transtel, Inc. (submitted for the record); Sackler 2645-46, 2650-51; Gertner 2770-74; Michelotti 2784; Humphrey 2799.

45. Burrington 2555-56; Doyle 2533-34; Michelotti 2873.

46. Doyle 2532-34; Humphrey 2800; Sackler 2640-41.

47. D. Goldstein 2392-93; Herold & Lopker supra note 44; Barker 2705.

48. Cutler 2422.

49. Burson 2319; Berman 2885-86; Barker 2633-34; Rotfeld 2408.

50. Sackler 2692-93.

51. Gertner 2771-73.

52. Gitlitz 2919; Belair 2955; Goldman 2929-31; Wellbery 2974; Strenio 2971.

53. Braasch 2684; Sackler 2641; Michelotti 2782; Andreotta 2496-99; Kang 3010-11; Young 2316; Alter 2395-96; Goldman 2927; Wellbery 2973.

54. Burrington 2545-56.

55. Cole 2806.

56. Gitlitz 2917; D. Goldstein 2392-93; Silbergeld 2419-21.

57. Silbergeld 2366; D. Goldstein 2385.

58. Rotfeld 2415-16; Moore 2344.

59. Sherman 2865; Burson 2270; Cutler 2379-81; Steel 2571-72; E. Brown 2696; Braasch 2690-91, 2698; Gregg 2698-99; Gitlitz 2910-11; Sloan 2574-85; Dowd 2699.

60. Cole 2858-59; Post 2877-78; Burson 2270.

61. Cole 2809-12 (demonstrating Better Business Bureau Web site program).

62. Gregg 2698-99; Dowd 2697.

63. Sloan 2574-85 (reporting on the recent study of telemarketing fraud by the American Association of Retired Persons that revealed that fraudulent marketers not only succeed with vulnerable groups, but with people who are affluent and well-educated).

64. Burrington 2830-32.

65. Huyard 2512.

66. Andreotta 2489-90.

67. Doyle 2519-2520; King 2602; Andreotta 2483.

68. According to one estimate, $750 billion in U.S. commerce is based on the telephone. Huyard 2516.

69. These advances include 800-number and 900-number "pay-per-call" services, "intelligent call processing" that efficiently routes incoming calls, and "interactive voice processing" that allows consumers to communicate by entering numbers on a touch tone telephone. Andreotta 2484-2488. For telemarketers, automatic dialers can weed out busy signals and answering machines. When a consumer does answer, the call rolls over to a sales representative. Huyard 2503-2505.

70. Information is transmitted over ordinary telephone lines 2½ to 5 times faster using the new ISDN (Integrated System Digital Network) technology as compared with a standard computer modem. The experimental ADSL telephone system transmits information even more quickly. Young 2251-52.

71. Young 2252; Andreotta 2491.

72. The smart card is a small, credit-card sized device that functions both as an identification card and an electronic wallet. It is used in conjunction with TV- or phone-like appliances referred to as "readers." Andreotta 2494-95; Braasch 2683-84.

73. Mills 2589.

74. Over 11 million Americans are employed in some fashion in the direct marketing industry of which telemarketing is a major component. In 1994, $600 billion in goods and services were sold through the direct marketing medium; by the year 2000 that figure is expected to grow by 30%. Gallant 2655.

75. Huyard 2501.

76. Huyard 2513-14.

77. Gallant 2655-57.

78. German law, for example, prohibits a company from telemarketing unless the marketer obtains prior written permission from the consumer. Gallant 2659-60.

79. William W. Burrington and Thaddeus J. Burns, Hung Up on the Pay-Per-Call Industry? Current Federal Legislative and Regulatory Developments, 17 *Seton Hall Legislative Journal* 359, 366 (1993) (submitted for the record). A company that develops and sells pay-per-call programming is an Information Provider (IP). An intermediary "Service Bureau" may assist the IP in developing its programming and arranging with the carrier for the IP's 900-number lines. The IP is paid for its services through an agreement with the carrier. *Id.* at 361.

80. Pay-per-call services include product information and support lines, stock market quotes, weather information, marketing, merchandising, consumer research, and customer services. *Id.* at 366-67.

81. *Id.* at 359-60.

82. Such scams rely on old tools such as sucker lists, ads, post cards, telephone pitches, and glib telemarketing. Zubrod 3092.

83. Barker 2626-27; Zubrod 3092.

84. Barker 2627; Doyle 2527.

85. Sloan 2574-85.

86. Sloan 2574-85; Barker 2629; Doyle 2523-24.

87. Zubrod 3092.

88. Harris 3107. Electronic transaction and voiceless communications systems, data processing and tracking systems, and computer-based commercial opportunities all provide means for new methods of consumer fraud. Barker 2625.

89. People on "sucker lists" may receive "as many as 10 to 20 calls a day soliciting them to buy things, to go on cruises, telling them they've won prizes and so on." Doyle 2523-24.

90. Larabie-LeSieur 3118. To a much lesser extent, there have been complaints about fraudulent operations in other countries such as Mexico and Bermuda. Barker 2637.

91. "In one celebrated example, a television Santa Claus urged children viewing the program to hold the telephone receiver up to the television, which emitted the dial tones necessary to automatically connect the child to a pay-per-call service." Burrington & Burns, supra note 79, at 370-72.

92. Harris 3108; Barker 2633, 2636; E. Brown 2711.

93. Harris 3107. Some countries solicit U.S.-based chat lines and pay-per-call schemes to supplement their postal and telephone earnings. Barker 2633, 2637.

94. Harris 3107. Consumers do not recognize the 809 area code as an international call because it does not begin with 011. Often there is a recording to keep people on the line. E. Brown 2712.

95. Harris 3110.

96. Harris 3109. The phone traffic to Sao Tome, for example, jumped from 40,000 minutes in 1992, to 13.2 million minutes in 1994; the traffic to Moldova jumped from 81,000 minutes in 1993 to 6 million in 1994. In part, the growth stems from efforts to circumvent U.S. law enforcement. *Id.*

97. Harris 3108.

98. Zubrod 3091.

99. Barker 2628-30.

100. Barker 2628.

101. Zubrod 3091.

102. Doyle 2524-25. Retrieving consumers' cash is much harder than preventing them from handing it over to fraudulent telemarketers in the first place. *Id.*

103. Barker 2633; Harris 3133.

104. Larabie-LeSieur 3118. Law enforcement agencies, operating with substantially reduced budgets, also face restrictions on cooperation and information sharing. *Id.*

105. Braasch 2684; Sackler 2641; Gallant 2659; L. Goldstein 2597-98; Steel 2562, 2604; Held 3097; Gregg 2673.

106. Burrington 2555-56; Sackler 2645-46, 2650-51; Braasch 2687; L. Goldstein 2600.

107. Doyle 2532-35; Burrington 2555-56; Mills 2595; L. Goldstein 2597-600.

108. Burrington 2555-56; Herold & Lopker, supra note 44, at 1-2; L. Goldstein 2597-98; Held 3148.

109. Sackler 2640.

110. Gallant 2662.

111. Sackler 2646, 2651; Braasch 2688. The Telemarketing Sales Rule, developed through broad consultation with the public and private sectors, provides consumer protection without overburdening legitimate telemarketers. Doyle 2532; Sackler 2643; L. Goldstein 2597-98; Mills 2595.

112. There is a need for more enforcement of consumer protection laws. Harris 3133-34; Herold & Lopker, supra note 44, at 1-2; Barker 2634.

113. Held 3148; Zubrod 3093; Harris 3113. One of the greatest challenges for law enforcement agencies is the task of coping with the increased volume of fraud and new scams at a time of diminished resources. Doyle 2529-30; Harris 3133.

114. Some of the most important collaborative efforts have been at an individual level, where investigators in various agencies or offices work together to solve problems. Zubrod 3138-39.

115. This includes the cross-designation of FTC and other agency attorneys in criminal investigations. While there is some institutional resistance to such overlap and the sharing of grand jury information, the resistance is gradually dissipating and, in the future, more FTC attorneys will be working as Special Assistant United States Attorneys in fraud prosecutions. Zubrod 3095.

116. Zubrod 3136; Larabie-LeSieur 3139. Although prosecutors are pursuing these crimes more aggressively, judges still are likely to give only probationary sentences to white collar criminals engaged in global telemarketing fraud. Zubrod 3136-37.

117. Zubrod 3093-94. A first step might be a network among agencies for obtaining public information in foreign jurisdictions. Larabie-LeSieur 3127-28. An international group of law enforcement agencies — the "International Marketing Supervision Network" — has been established to communicate about their respective countries and cross-border enforcement. Starek 3117. The establishment of "mutual legal assistance provisions" also may be useful and necessary to assist agencies in enforcement. Larabie-LeSieur 3128; Starek 3129. It will be necessary to overcome some institutional reluctance to share information, however, as well as some legal barriers that prevent exchanging confidential law enforcement information. Zubrod 3142; Larabie-LeSieur 3126.

118. Larabie-LeSieur 3124.

119. "[M]utual trust and sharing of a common vision are key elements to our success." Larabie-LeSieur 3128. Working together and staying relevant to emerging problems, however, will "require an awful lot of work." Held 3130.

120. Braasch 2684; Sackler 2640-41; Gallant 2659; L. Goldstein 2597-98.

121. Braasch 2684; Steel 2562; Held 3097.

122. Held 3131-32.

123. Steel 2603; Gregg 2673; L. Goldstein 2598-99. Consumers do not really know who is on the other end of the telephone line, and legitimate telemarketers must take responsibility for distinguishing themselves from fraudulent telemarketers. E. Brown 2676-77; Dowd 2697.

124. Burrington 2545-56; L. Goldstein 2598.

125. Sackler 2642-44.

126. Sackler 2644.

127. Braasch 2685.

128. Steel 2561-62; 2566-68.

129. Harris 3114-15. The Federal Communications Commission worked with industry to develop this voluntary agreement to protect consumers. The FCC also is working with foreign telephone companies and regulators to stop the fraud at the other end of the line. A few overseas carriers have agreed to provide the same consumer protections as their domestic counterparts. Harris 3115.

130. Gallant 2662-63. This certification may provide the means for legitimate companies to distinguish themselves from fraudulent ones. E. Brown 2677.

131. Gallant 2663.

132. Gregg 2670-72. Shipping companies could stop the use of CODs; mailbox companies could prevent use of the word "suite," which signals to consumers that they are dealing with a legitimate company at a real location, not just a mailbox address. Gregg 2673.

133. Sackler 2692. This would enable legitimate telemarketers to identify themselves to consumers and separate themselves from fraudulent telemarketers.

134. Sackler 2692-93. This device would be similar to the computer filtration devices that enable parents to screen out certain content for their children. Sackler 2693. However, given the clever "pitches" of con artists, it might be difficult to characterize a fraudulent telemarketing call so that a computer could recognize it. Further, scams change so rapidly that it would be hard to keep the device up-to-date. E. Brown 2693-94; Dowd 2696.

135. Gallant 2702-04, 2707 (the name of the business that calls will appear in the caller ID box).

136. Barker 2629; Dowd 2697, 2699; Gallant 2697; Sackler 2638-39; Braasch 2698; Gregg 2721-22; E. Brown 2695-96; King 2602.

137. Sloan 2583-85.

138. Sloan 2583-85; E. Brown 2695-96.

139. Gregg 2698-99, 2721-22; Barker 2629; Dowd 2699; Gallant 2697; E. Brown 2695-96; King 2602; Braasch 2690-91.

140. L. Goldstein 2599.

141. Steel 2572. Bankcard companies, for example, devote considerable resources to educating consumers about bankcard fraud.

142. Moore 2334-35.

143. Moore 2336-37. The remaining television advertising dollars are divided among national and local spot programming.

144. *Id.*

145. Moore 2337.

146. Silbergeld 2348. The three new infomercial networks are: the Direct Response Advertising Group Network, the Product Information Network, and the Access Television Network. *Id.*

147. Silbergeld 2355.

148. Moore 2343; Silbergeld 2353; D. Goldstein 2388.

149. D. Goldstein 2388-89.

150. D. Goldstein 2384-85; Rotfeld 2413-14; Cutler 2442-43. Various explanations were offered for the limitations and variations seen in television self-regulation, *e.g.*, a lack of enforcement mechanisms inherent in self-regulation, the fact that emerging television groups face greater economic pressure to fill the hours in a week than do well-established broadcast networks and thus may clear advertising that would not be cleared by the broadcast networks, and the possibility that self-regulation might only take place in response to government activism. Cutler 2442-43; Rotfeld 2408, 2444-45.

151. Rotfeld 2414.

152. Rotfeld 2415.

153. D. Goldstein 2384-85.

154. Silbergeld 2346; D. Goldstein 2391.

155. D. Goldstein 2388.

156. D. Goldstein 2384-85; Rotfeld 2414-15. For a discussion of the factors that impact the screening procedures in the cable industry, see Alter 2395-97.

157. D. Goldstein 2384-85.

158. D. Goldstein 2389.

159. *Id.*

160. Cutler 2379-81; D. Goldstein 2392.

161. Rotfeld 2407; D. Goldstein 2418.

162. Rotfeld 2408.

163. D. Goldstein 2392.

164. Silbergeld 2419-20.

165. Cutler 2376.

166. *Id.*

167. Gross 2737-38; Burrington 2853; Humphrey 2791.

168. Gross 2739-40.

169. Zalewski 2881; Weitzner 2881.

170. Gross 2740. Web technology enabled information to be presented in a highly graphical or pictorial manner, using illustrations and even photos. Screen displays created with the Web technology are called Web pages, or "sites," and are viewed by using a Web "browser." Web pages also contain cross-links to other sites or addresses on the Internet, such that by merely clicking on the cross-link, users can skip to the cross-linked site and access whatever information is available there. Alternatively, users can bounce between unrelated, unlinked sites by entering the Internet addresses of those sites in the Web browser.

171. Gross 2737-40; Post 2822.

172. Gross 2740-41.

173. Cole 2803-04.

174. Bell 2239-44; Nisenholtz 2757-59; Michelotti 2775-76; J. Walker Smith, Civilizing Cyberspace at 2 (submitted for the record) [hereinafter Civilizing Cyberspace]. This empowerment of the consumer also has ramifications for non-advertising communications. In a recent survey of online users, 75% of the users considered online services to be a better information source than traditional media because the information and news available online is "unedited" by a third-party provider. *Id*.

175. Consumer control over the information they choose to view will also provide some indication of whether consumers, in fact, find advertisements useful, as the economists have been asserting for years. Post 2850-51.

176. Civilizing Cyberspace, supra note 174, at 2; Michelotti 2776 (cyberspace advertising must be invitational rather than intrusive).

177. Cole 2803.

178. Bell 2323; Nisenholtz 2758; Professor Henry Perritt, Villanova University School of Law, Letter of November 7, 1995, at 5 (submitted for the record) (suggesting regulations to prohibit unsolicited commercial e-mail, similar to the FCC regulation prohibiting unsolicited commercial fax messages).

179. Michelotti 2775, 2777-78, 2789, 2849.

180. Humphrey 2796-97.

181. Michelotti 2777-78; Humphrey 2794.

182. Humphrey 2794; Cole 2803-04 (warning that the low cost of producing a "quality-appearing" Web site will make unresearched consumer choices more risky). See also Gertner 2767 (suggesting that new entrants can find customers without buying expensive customer lists or incurring the costs of telemarketing or direct mailings).

183. Berman 2839-40; Sherman 2841.

184. Nisenholtz 2847; Post 2851.

185. Berman 2838-39; Nisenholtz 2847. While consumer interest in viewing online ads may be low today, this ability to cross-advertise Internet addresses may become more valuable if the "Yahoo" entertainment model of the Internet develops. Nisenholtz 2860-61. See discussion in text accompanying notes 192-94 about the possible future domination of cyberspace by mega-advertisers or mega-entertainment providers.

186. Nisenholtz 2757.

187. Nisenholtz 2757-58; Michelotti 2775-76.

188. Nisenholtz 2847.

189. Michelotti 2775.

190. Nisenholtz 2749-50; Michelotti 2848. The situation today is like the days of television before the Milton Berle show, when advertising agencies were strenuously debating the level of resources that should be shifted to the "new" TV medium from the tried and true print advertising. Michelotti 2872.

191. Burrington 2853.

192. Nisenholtz 2750-52 (describing the elements of scenario one). Yahoo is an online guide to sites available on the Internet, whose young founder recently stated that the Yahoo guide exists because "people don't want to have to waste time wasting time." *Id.*

193. Nisenholtz 2752-54 (describing scenario two).

194. The few media super-sites would be surrounded by smaller, associated-content sites, each with an audience subset. Nisenholtz 2753.

195. Nisenholtz 2754-55 (describing scenario three).

196. Michelotti 2779-80; Post 2822.

197. Michelotti 2783-84. Intellectual property creates an indicia of authority and becomes the advertiser's "signature" on an ad. *Id*.

198. See Chapter 6, Volume I, of this report.

199. Even users, *i.e.*, consumers, of the interactive media might be viewed as publishers of information. Michelotti 2785.

200. Cyberspace provides the opportunity to "lift" or wholly create copyright- or trademark-infringing messages with great ease; such messages can dangerously appear to be "official," as if they were coming from the original advertiser. Michelotti 2786.

201. Michelotti 2784-86. Responsibility for Web site links to other sites is another unanswered issue. *Id*. At a minimum, Web pages should clearly disclose the identity of any sponsoring advertisers. *Id.*

202. Civilizing Cyberspace, supra note 174, at 1.

203. Humphrey 2795. Such system will either use new technology or implement currently available public key encryption to enable payment by digital cash or real-time credit card authorizations. Perritt, supra note 178, at 4-5.

204. Perritt, supra note 178, at 4-5; Gross 2742; Humphrey 2795.

205. Pollin 2289.

206. Michelotti 2780-81; Cole 2806; Burrington 2828; Gertner 2868-69; Weitzner 2878-80.

207. Civilizing Cyberspace, supra note 174, at 3. Online usage doubled throughout 1994, during a period of enthusiastic publicity about cyberspace, but then slowed, following publicity about problems that can arise online. *Id*.

208. *Id*.

209. Cole 2806; Weitzner 2880.

210. Michelotti 2780-81.

211. Bell 2242. However, due to the greater availability of information in online markets, new entrants can gain credibility, or lose it, very quickly. Cole 2844.

212. Weitzner 2881-82. (The market for Internet access might not be providing affordable service without this underpinning of a regulated phone service.)

213. Bell 2237-38; Michelotti 2789.

214. Nisenholtz 2860-61.

215. NTIA Study, supra note 38. The core of U.S. telecommunications policy has been "universal service," *i.e.*, affordable access to telephone service for all Americans. In today's world, "universal service" may include not only basic phone service, but also access to or ownership of computers and modems to participate in the new information age. *Id*. at 1. See also Jones 2846 (expressing concern that a different quality of information may be provided to network versus non-network consumers).

216. Burson 2266-67; Humphrey 2792; Burrington 2855.

217. Burson 2267-68.

218. Gertner 2771; Nisenholtz 2758; Cole 2804-05 (back-of-the-book marketers can operate online with minimum investment). The Internet's ability to support small, global transactions

may also increase the incidence of fraud, because victims are unlikely to pursue costly international legal remedies in such circumstances. Perritt, supra note 178, at 1-2.

219. Post 2824; Burrington 2833.

220. Humphrey 2792-93, 2795.

221. Humphrey 2795.

222. Perritt, supra note 178, at 5 (suggesting regulatory action to require a cooling-off period during which consumers would be able to rescind certain online transactions).

223. Humphrey 2793. Anonymity is a two-edged sword. While it is one of the most serious obstacles faced by law enforcers attempting to prosecute online fraud, it also enables consumers to preserve their privacy while "surfing the Net." *Id*.

224. Burson 2267. With a portable computer, anyone can be hooked up wherever there is a phone jack, and very soon they won't need a phone jack. Humphrey 2793.

225. Michelotti 2874.

226. Humphrey 2795-96.

227. Humphrey 2797-98.

228. Humphrey 2798-99.

229. Michelotti 2782-83.

230. Cole 2858-59.

231. Nisenholtz 2860.

232. Center for Media Education, supra note 28, at 1-3.

233. *Id.* at 4-5.

234. Michelotti 2875-76.

235. Burrington 2835; Humphrey 2799; Cole 2806. A recent survey showed that online users believe that government regulation ultimately will be needed, but that regulation, as well as self-policing efforts, will fail. If so, there could be a crisis in consumer confidence that chokes off growth of the online market. Civilizing Cyberspace, supra note 174, at 3.

236. Burson 2271-74; Cole 2858-59; Jones 2863-64; Post 2877-78.

237. Michelotti 2872; Perritt, supra note 178, at 3 (urging government agencies to monitor and gain experience with problems online); Gertner 2770 (arguing that regulation can create new entry barriers). See also Michelotti 2784, Burrington 2885, Berman 2884 (all expressing concern that online censorship legislation might establish a framework for addressing other issues and therefore limit the Internet's potential).

238. Nisenholtz 2749. "Attempts to set inflexible policies around something ephemeral at best would be a waste of effort and at worst, could stifle the evolution of the thing that, from a marketing perspective, is not yet real." *Id.*

239. Burson 2268-70; Cole 2805 (the necessary monitoring levels will be much higher than with traditional media outlets); Nisenholtz 2861 (the pace of Internet innovation will necessitate constant vigilance).

240. Cole 2805-06; Post 2822; Perritt, supra note 178, at 3.

241. Perritt, supra note 178, at 5-6. Governments should also be meeting to resolve the conflict of law issues posed by online advertising. Michelotti 2780.

242. Perritt, supra note 178, at 1-4. If international, this institution could be established under the auspices of the UN. *Id*.

243. Center for Media Education, supra note 28, at 7. One approach would be to ban such activities as tracking children's online activities, linking children's Web sites to advertiser sites, providing interaction with product "spokescharacters," and aiming direct marketing to children. In addition, there could be requirements for demarcation between advertising and programming content, restriction of online purchases to those over 18, and computer coding of advertising sites to permit automatic screening out of such sites by parents. *Id.*

244. Michelotti 2872, 2874. The Children's Advertising Review Unit (CARU), a division of the Council of BBB, is now at work on children's advertising issues. Cole 2805. Market solutions, such as software filters, already are available for parents to block their children's access to alcohol or tobacco advertising. Michelotti 2784, 2871.

245. Michelotti 2874 (limiting online children's advertising to certain hours of the day, as it is with television advertising, may not be effective online).

246. *Id.*

247. Humphrey 2799-2800; Burrington 2835-36; Civilizing Cyberspace, supra note 174, at 3.

248. Burson 2319; Berman 2885-86; Michelotti 2787 (urging government and industry to move forward in addressing issues of consumer privacy and advertising liability).

249. Burson 2269-70, 2273; 2319-20; Michelotti 2780-81; Cole 2806; Burrington 2832-36; Weitzner 2879-80. Regulators should allow the private market to test its ability to fulfill consumers' needs for information and protection. Gertner 2868-69, 2773-74.

250. Cole 2805, 2811-12. Such a program might include "e-mediation" and arbitration, *i.e.*, resolution of consumer complaints via e-mail or other online communications, regarding goods or services offered online. Other possible requirements for company participation are keeping on file with the BBB basic business information, such as the company's physical address, and maintaining a satisfactory complaint-handling record for both online and off-line business. Various industry groups, such as the Advertising Standards Alliance organizations in the UK and Europe and the International Chamber of Commerce in Paris, have also begun to address self-regulation from an international perspective. Michelotti 2781.

251. Gertner 2771-72. Online stores or shopping malls may also serve a certification function, just as department stores do now. *Id.*

252. Perritt, supra note 178, at 6. Areas suitable for private arbitration include intellectual property, personal privacy, consumer protection, and possibly defamation, intentional infliction of emotional distress, or intentional interference with contract. *Id*.

253. *Id.* at 6-7. Most developed countries are signatories to the New York Convention treaty on enforcement of international arbitration awards. *Id*.

254. *Id.* at 7.

255. Post 2823-24. The system was initially developed for copyright infringement claims, but could also be extended to complaints involving defamation or marketing fraud. Post 2826.

256. Post 2824-25. Such mechanisms may lead to development of a "cyberspace common law" to help address the emerging legal issues inherent in the evolving technology and multi-jurisdictional nature of cyberspace. Because the decisions of the Virtual Magistrate system will be publicly available, the online users themselves can participate in the development of this "common law." Post 2825-27.

257. Michelotti 2784, 2871; Pollin 2326-29. It may also be possible, in effect, to compartmentalize the Internet as to content type, or into regulated and unregulated areas, thus allowing consumers to judge for themselves which areas to visit. Pollin 2326.

258. Weitzner 2814-16, 2820. Such tools balance the responsibility of content providers with that of individuals accessing the information while still allowing the broadest possible diversity

of information online. *Id.* Michelotti 2784.

259. Weitzner 2814-17. PICS is a joint effort of industry and non-profit entities to formulate the underlying technical standards for the system.

260. Weitzner 2816-19. The third-party ratings systems would reside on PICS-compliant Internet servers and be offered as a service available for use on the Internet and with Web browsers, including those used by the commercial online services. Because the ratings lists would not be permanently attached to the underlying content being rated, any given Internet site might be included in numerous ratings systems. *Id*.

261. Burrington 2835. In addition, in the United States, legal avenues exist, such as Section 43(a) of the Lanham Act, by which competitors can, in effect, police each other. Sherman 2865. Marketing organizations could also police consumer fraud through actions similar to those used by ASCAP and BMI to fight copyright infringement. Perritt, supra note 178, at 3.

262. Humphrey 2800. As part of this effort, the major commercial online services have provided the FTC and state Attorneys General with resource manuals incorporating their terms of service and other policies. Burrington 2833-34.

263. Burrington 2834.

264. Cole 2806.

265. Perritt, supra note 178, at 8. The FTC could certify private dispute resolution institutions to handle the actual case load, working in a general way from the Magnuson-Moss dispute resolution requirements (16 C.F.R. Part 703). Perritt, supra note 178, at 3.

266. Burrington 2831-32; Cole 2804-06; Burson 2269-70; Sherman 2865; Humphrey 2800. This education must start with the basics, such as don't provide credit card information in response to an e-mail solicitation or disclose your password for a commercial online service, and continue through explaining the rules, or lack thereof, extant in cyberspace. Burrington 2830.

267. Burrington 2830; Cole 2806-07.

268. Cole 2807-08. Government and consumer education organizations could develop more extensive online cross-links to each others' Web sites as well. *Id*.

269. Cole 2804-06. Given this influx of new marketers, regulators and self-regulators may have to deal with a higher percentage of non-complying advertisers than in the past. *Id.*

270. Burrington 2832; Burson 2273-74 (suggesting that regulators should create an on-going dialogue with "netizens").

271. Kang 3010.

272. The clickstream is the sequence of electronic markers left by online users as they browse through various sites on the Internet.

273. Kang 3010.

274. Kang 2946.

275. Burson 2266-67; Belair 2955; Andreotta 2496.

276. Wellbery 2973; Goldman 3023; White 2320-21; Hendricks 2976.

277. Gitlitz 2941.

278. Kang 2896-97; Plesser 3018.

279. Gitlitz 2941.

280. Goldman 2927.

281. Gitlitz 2941; Goldman 2927-28; Wellbery 2973; Kang 3010-11.

282. Goldman 2928.

283. Gitlitz 2912; Plesser 2987-88.

284. An "opt in" system might apply to the use of sensitive information, such as medical or financial data. Kang 3012; Plesser 2987; Wellbery 2972-73; U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA) Privacy and the NII: Safeguarding Telecommunications-Related Personal Information (1995) at 8-9 (submitted for the record). Or "opt in" could apply to any secondary use of non-sensitive personal information. Baker 3016. Yet another approach is to refrain from the use of medical information for marketing purposes. Plesser 2987.

285. Kang 2897-2900.

286. Kang 2899.

287. Kang 2939-40, 2980.

288. Kang 2978-80.

289. Goldman 2984-85.

290. Perritt, supra note 178, at 4-5.

291. Goldman 2925-26.

292. Goldman 2925-28, 3025; Goldman, Privacy and Individual Empowerment in the Interactive Age at 13-16 (submitted for the record) [hereinafter Privacy and Individual Empowerment]; Kang 2946-48, 3012.

293. Privacy and Individual Empowerment, supra note 292, at 14; Varney 2933-34.

294. Privacy and Individual Empowerment, supra note 292, at 14-15.

295. Goldman 2948-49. For a description of PICS, see note 259 supra, and accompanying text.

296. Hendricks 2957-59; Plesser 2968.

297. Gitlitz 2915; Strenio 3003-06.

298. Kang 2931; Strenio 2969-71; Wellbery 2974.

299. Gitlitz 2910-11, 2917.

300. Wellbery 2974; Goldman 2931.

301. Gitlitz 2919.

302. Strenio 2970; Belair 2955; Baker 2964.

303. Nisenholtz 2748. In 1967, the leading slide rule manufacturer commissioned a study of the future of technology that predicted video phones and bed-making machines but missed the development of electronic calculators. Ten years later, it was out of business.

304. Gross 2856.

305. Gross 2856.

306. Gross 2856-57.

307. Young 2253.

308. Levin 3040.

309. Levin 3054.

310. Levin 3056.

311. Moore 2341-42.

312. Levin 3064-77 (demonstrating the first digital interactive cable network now operating in Orlando, Florida).

313. Sackler 2727.

314. Gross 2742.

315. Gross 2742-43.

316. Andreotta 2493.

317. Andreotta.

318. Levin 3043; Michelotti 2775-76.

319. Kimmelman 2312; see also the discussion of Commissioner Varney and Mr. Levin 3087-3088.

320. See discussion of Chairman Pitofsky and Mr. Levin 3081-82.

321. Young 2249.

322. Gross 2855.

323. Gross 2856-57.

324. See Chapter I, Volume I of this report.

325. Larabie-LeSieur 3118.

326. Michelotti 2779-80; Barker 2632-33; Zubrod 3091; Larabie-LeSieur 3124; Harris 3107, 3113; Held 3130.

327. Blatch 3252; Guarino 3254-55.

328. Michelotti 2779-80; Post 2822.

329. Chapter I, Volume 1 of this report, at 2.

330. *Id.* at 5-6. Exports grew from 5.5% to 12% of the gross national product, while imports grew from less than 7% to more than 14%.

331. *Id.* at 7-8.

332. *Id.* at 6.

333. Blatch 3250-51. The Canadian experience in harmonizing standards internally revealed that the business community is often more concerned about having to meet differing standards than it is about having to meet high consumer protection standards. Hoffman 3225; Thompson 3239-41.

334. MacLeod 3175.

335. Starek 3172; MacLeod 3175, 3179. Germany, for example, prohibits comparative advertising; its concern is unfair competition, not consumer protection. A recent EU directive would allow more comparative advertising, however. MacLeod 3179; Blatch 3191-94.

336. Germany, for example, prohibits calls unless consumers give written permission in advance. Gallant 2659-60.

337. The U.S. imposes fewer regulations on the advertising of these products than many other countries. Silverglade 3188.

338. MacLeod 3180, 3265-66; Guarino 3245, 3254; Spivak 3207-08; Hall 3167.

339. Germany limits discount and premium offers. Blatch 3191-94, 3251. See also MacLeod 3175-76.

340. Michelotti 2779-80.

341. Michelotti 2780.

342. Steiger 3250; Blatch 3250-51; Silverglade 3183-84; MacLeod 3252-53; Guarino 3246.

343. Spivak 3208; Thompson 3239-42.

344. Hendricks 3008-09.

345. Blatch 3192-93; Guarino 3254-55.

346. Meier 3153-54, 3157-58. Not all obstacles are legal, of course; some are based on national differences in culture, consumer preferences, infrastructure, and payment systems. Hall 3162-65, 3164-70.

347. Among the agreements to lower barriers is The Agreement on Technical Barriers to Trade (TBT) which prohibits the discriminatory use of standards, and encourages the use of international standards to harmonize government regulations across borders. Similar principles are at the heart of NAFTA, the Asian and Pacific Economic Cooperation Agreement (APEC), and the nascent Free Trade Agreement of the Americas. Meier 3153-57.

348. The International Organization for Standardization (ISO) plays an important role in developing international voluntary standards, and its Consumer Policy Committee (COPOLCO) promotes national and international standardization from the consumer protection point of view. Spivak 3204-05, 3207-11.

349. Meier 3155.

350. The International Chamber of Commerce, for example, is working to establish codes for advertising practices. Blatch 3195. U.S. and European toy manufacturers, along with the Council of Better Business Bureaus, are developing guides for children's advertising. Spivak 3210-11. The direct marketing companies also have international self-regulatory programs underway. Gitlitz 2916.

351. Meier 3157.

352. Agencies need to be sensitive to the implications of their regulations. An example of rules with enormous ramifications for international companies were FDA's regulations under the Nutrition Labeling and Education Act. Guarino 3246-47.

353. Lord 3214-19; Priestland 3248-49.

354. Lord 3216.

355. Lord 3215. Apparel and textile trade grew among the NAFTA countries by 30% — to $5.4 billion — in the first year of the trade agreement. *Id.* at 3217.

356. Lord 3215; Priestland 3249.

357. Silverglade 3183-84, 3247. International harmonization gives rise to some concern that consumer protection regulations may be harmonized downward to a low level of consumer protection. Silverglade 3186; Starek 3189. This need not be the case, however. Canada's experience with its internal harmonization effort, for example, proved just the opposite and produced uniformly high standards. Hoffman 3225-26.

358. Thompson 3237-42.

359. Lord 3214.

360. Hall 3167; MacLeod 3180-81.

361. Meier 3157; Silverglade 3185; Blatch 3190-91; Sackler 2650.

362. Spivak 3261.

363. Lord 3218.

364. The Commission can both learn and contribute in these settings. Thompson 3263; Spivak 3258.

365. To be effective, the Commission needs to present not just its views, but studies and evidence to support its policies. MacLeod 3181-82.

APPENDIX A

HEARING PARTICIPANTS

Robert H. Alter
Cabletelevision Advertising Bureau
Ralph Andreotta
AT&T
Stewart Baker
Steptoe & Johnson
John Barker
National Fraud Information Center
Robert R. Belair
Privacy & American Business
David Bell
Bozell, Inc.
Jerry Berman
Center for Democracy & Technology
D. Douglas Blanke
Office of the Minnesota Attorney General
Mari Ann Blatch
Reader's Digest Association, Inc.
George Braasch
Spiegel, Inc.
Eric Brown
Assistant Attorney General of Ohio
M. Zane Brown
Consumer Products Directorate
J. Beckwith Burr
Federal Trade Commission
William Burrington
America Online, Inc.
Charles Burson
Attorney General of Tennessee
Steven J. Cole
Council of Better Business Bureaus, Inc.
Scott Cooper
Intel Corporation
Barry Cutler
McCutchen, Doyle, Brown & Enersen

Nora Dowd
American Association of Retired Persons
James Doyle
Attorney General of Wisconsin
Harvey Dzodin
Capital Cities/ABC
James Gallant
NYNEX
Robert Gertner
University of Chicago, Graduate School of Business
Jonah Gitlitz
Direct Marketing Association
Janlori Goldman
Center for Democracy & Technology
Linda A. Goldstein
Hall, Dickler, Kent, Friedman & Wood
Debra Goldstein
Council of Better Business Bureaus
Dean Graybill
Federal Trade Commission
Barbara Gregg
Montgomery County (MD) Office of Consumer Affairs
Phill Gross
MCI Communications, Inc.
Elizabeth Toni Guarino
Buc, Levitt & Beardsley
Robert P. Hall III
National Retail Federation
Eileen Harrington
Federal Trade Commission
Scott Blake Harris
Federal Communications Commission
Richard D. Held
Visa International
Evan Hendricks
Privacy Times
Joseph Hoffman
Ontario Ministry of Consumer & Commercial Relations
Hubert H. Humphrey III
Attorney General of Minnesota
Wayne E. Huyard
MCI Communications, Inc.

Helene D. Jaffe
Weil, Gotshal & Manges
Mary Gardiner Jones
Consumer Interest Research Institute
Gene Kimmelman
Consumers Union, Washington Office
Jerry Kang
UCLA School of Law
Jane King
MCI Communications
Elaine D. Kolish
Federal Trade Commission
Rachel Larabie-LeSieur
Industry Canada
Gerald M. Levin
Time Warner Building
Susan Lord
American Textile Manufacturers Institute
William MacLeod
Collier, Shannon & Scott
Anne V. Maher
Federal Trade Commission
David Medine
Federal Trade Commission
Richard G. Meier
Office of the U.S. Trade Representative
Carla Michelotti
Leo Burnett Company
Olan Mills II
Olan Mills, Inc.
Michael Moore
D'Arcy, Masius, Benton & Bowles, Inc.
Lucy Morris
Federal Trade Commission
Martin Nisenholtz
The New York Times Electronic Media Company
C. Lee Peeler
Federal Trade Commission
Robert Pitofsky
Federal Trade Commission Chairman
Ronald Plesser
Piper & Marbury

Robert Pollin
AutoScribe, Inc.
Mary Ponder
Consumer Federation of America
David Post
Georgetown Cyberspace Law Institute
Carl Priestland
American Apparel Manufacturers Association
Herbert Rotfeld
Auburn University, Department of Marketing
Arthur B. Sackler
Time Warner Inc.
Jorge Reina Schement
Pennsylvania State University, College of Communications
Teresa Schwartz
Federal Trade Commission
Robert Sherman
Paul, Hastings, Janofsky & Walker
Mark Silbergeld
Consumers Union, Washington Office
Bruce Silverglade
Center for Science in the Public Interest
Katrinka Smith Sloan
American Association of Retired Persons
Steven Spivak
Chairman, University of Maryland
Roscoe B. Starek, III
Federal Trade Commissioner
James Steel
Master Card International
Janet P. Steiger
Federal Trade Commissioner
Andrew Strenio
Hunton & Williams
Michael Thompson
Whirlpool Corporation
Christine A. Varney
Federal Trade Commissioner
Daniel J. Weitzner
Platform for Internet Content Selection
Barbara S. Wellbery
National Telecommunications & Information Administration

Arthur White
    Yankelovich Partners, Inc.
William Wilkie
    University of Notre Dame, Department of Marketing
James Young
    Bell Atlantic
Mark Zalewski
    Cybercash, Inc.
Gordon Zubrod
    Assistant U.S. Attorney, Middle District of Pennsylvania

APPENDIX B

HEARING AGENDA

Thursday, November 16, 1995

Presiding for Opening Session — Chairman Robert Pitofsky

Welcome and opening remarks.

Panel 1: The Changing Marketplace

A. The Changing Face of Marketing
David Bell, Chairman, Bozell, Inc.

B. The Evolution of Payment Systems
Robert Pollin, President, AutoScribe, Inc.

C. The Year 2000: The Communications Technologies
James Young, Vice President and General Counsel, Bell Atlantic

D. The Year 2000: Technologies & The Consumer
Arthur White, Vice Chairman, Yankelovich Partners, Inc.

E. Consumer Protection Issues in the High-Tech, Global Marketplace
Charles Burson, Attorney General of Tennessee
Gene Kimmelman, Co-Director, Consumers Union (Washington Office)

Thursday, November 16, 1995

Presiding for the Afternoon Session — Commissioner Janet D. Steiger

Panel 2: The Changing Role of Television in Marketing

A. The Evolution of Television Advertising
Michael Moore, Corporate Executive Vice President, D'Arcy, Masius, Benton & Bowles

B. Consumer Protection Issues for Television Advertising & the FTC
Mark Silbergeld, Co-Director, Consumers Union (Washington Office)
Barry Cutler, McCutchen, Doyle, Brown & Enersen

C. Self-Regulation and the Future of Television Advertising
Debra Goldstein, Director, National Advertising Division, Council of Better Business Bureaus

Herbert Rotfeld, Professor of Marketing, Auburn University College of Business

Robert Alter, Vice-Chairman, Cabletelevision Advertising Bureau

Round Table Discussion with Panelists and Commentators:

Harvey Dzodin, Vice President, Commercial Standards, Capital Cities/ABC

Helene D. Jaffe, Chair, Consumer Protection Committee, ABA Antitrust Section; Weil, Gotshal & Manges

Mary Ponder, Senior Projects Director, Consumer Federation of America

William Wilkie, Professor of Marketing, University of Notre Dame

Friday, November 17, 1995

Presiding for the Morning Session — Commissioner Janet D. Steiger

Panel 3: the Changing Role of the Telephone in Marketing

A. An Overview of Telephone Technologies

Ralph Andreotta, Director, Technology and Infrastructure, AT&T

B. Marketing by Telephone: An Overview and Demonstration

Wayne Huyard, President, MCI Mass Market, Sales & Service

C. Consumer Protection & Telemarketing Fraud

James Doyle, Attorney General of Wisconsin

James Steel, Vice President, Security & Risk Management, MasterCard

Katie S. Sloan, Manager, Consumer Affairs, American Association of Retired Persons

D. Consumer Protection & Pay-Per-Call Services

Scott Cooper, Manager, Government Affairs, Intel Corporation

William Burrington, Assistant General Counsel & Director of Policy, America Online

Round Table Discussion with Panelists and Commentators:

Linda Goldstein, Hall, Dickler, Kent, Friedman & Wood

Jane King, Senior Manager, Law & Public Policy, MCI

Olan Mills II, Chairman, Olan Mills, Inc.

Friday, November 17, 1995

Presiding for the Afternoon Session — Chairman Robert Pitofsky

Panel 4: Telephone Technologies: Emerging Issues

A. The Next Generation of Consumer Protection Issues

Jorge Reina Schement, Dean, Graduate Studies & Research, College of Communications, Pennsylvania State University

John Barker, Director, National Fraud Information Center; Vice President, National Consumers League

B. Consumer Education & Self-Regulation

Arthur B. Sackler, Vice President for Law and Policy, Time Warner Inc.

James Gallant, Director of Marketing, NYNEX

Round Table Discussion with Panelists and Commentators:

George Braasch, Corporate Credit Counsel, Spiegel, Inc.

Eric Brown, Assistant Attorney General of Ohio

Nora Dowd, Deputy Attorney General, Office of the Pennsylvania Attorney General (on leave with AARP Telemarketing Fraud Project)

Barbara Gregg, Director, Montgomery County (MD) Office of Consumer Affairs

Monday, November 20, 1995

Presiding for the Morning Session — Commissioner Christine A. Varney

Panel 5: The Newest Medium for Marketing: Cyberspace

A. Demonstration and Overview of the Technology

Phill Gross, Director, Internet Marketing, MCI Telecommunications Division

B. Marketing in Cyberspace

Martin Nisenholtz, President, New York Times Electronic Media Company

Carla Michelotti, Senior Vice President, Leo Burnett Co.

Robert Gertner, Professor of Economics & Strategy, University of Chicago Graduate School of Business

C. Consumer Protection Issues in Cyberspace

Hubert H. Humphrey III, Attorney General of Minnesota

D. Alternative Approaches to Protecting Consumers in Cyberspace

Steve Cole, Senior Vice President, Council of Better Business Bureaus

Daniel Weitzner, Co-Chair, Platform for Internet Content Selection (PICS)

David Post, Professor of Law, Georgetown University Cyberspace Law Institute

William Burrington, Assistant General Counsel & Director of Policy, America Online

Round Table Discussion with Panelists and Commentators:

Jerry Berman, Executive Director, Center for Democracy & Technology

Mary Gardiner Jones, President, Consumer Interest Research Institute

Robert Sherman, Paul, Hastings, Janofsky & Walker

Mark Zalewski, Director, Business Development, Cybercash, Inc.

Monday, November 20, 1995

Presiding for the Afternoon Session — Commissioner Christine A. Varney

Panel 6: Privacy in Cyberspace

Jerry Kang, Professor of Law, UCLA School of Law

Jonah Gitlitz, President, Direct Marketing Association

Janlori Goldman, Deputy Director, Center for Democracy & Technology

Round Table Discussion with Panelists and Commentators:

Stewart Baker, Steptoe & Johnson

Robert R. Belair, Editor, Privacy and American Business

D. Douglas Blanke, Director of Consumer Policy, Office of the Minnesota Attorney General

Evan Hendricks, Publisher/Editor, Privacy Times

Ronald Plesser, Piper & Marbury

Andrew J. Strenio, Hunton & Williams

Barbara S. Wellbery, Chief Counsel, National Telecommunications & Information Administration, U.S. Department of Commerce

Tuesday, November 21, 1995

Presiding for the First Presentation — Chairman Robert Pitofsky

Convergence of Technologies and Globalization

Gerald Levin, Chairman and Chief Executive Officer, Time Warner Inc.

Presiding for the Morning Session — Commissioner Roscoe B. Starek, III

Panel 7: Globalization and Cross Border Fraud

A. An Overview

Gordon Zubrod, Assistant U.S. Attorney, Middle District of Pennsylvania

B. Cross Border Consumer Fraud

Scott Blake Harris, Chief, International Bureau, Federal Communications Commission

Richard D. Held, Senior Vice President, Risk Management and Security, Visa International

Rachel Larabie-LeSieur, Director, Marketing Practices, Industry Canada

Tuesday, November 21, 1995

Presiding for the Afternoon Session — Commissioner Roscoe B. Starek, III

Panel 8: International Trade and Consumer Protection Issues

A. Overview of International Trade Developments

Richard G. Meier, Deputy Associate Trade Representative, Office of U.S. Trade Representative

Robert P. Hall III, Vice President, Government Affairs Counsel, National Retail Federation

B. Differing National Laws and Implications for the FTC

William MacLeod, Collier, Shannon & Scott

Mari Ann Blatch, Vice President, Government Affairs, Readers Digest

Steven Spivak, Professor, University of Maryland, Chairman, Consumer Policy Committee, International Organization for Standardization

Susan Lord, Vice President, Government Relations, Springs Industries, Inc.; Chairman, Export Subcommittee, American Textile Manufacturers Institute

Bruce Silverglade, Director, Legal Affairs, Center for Science in the Public Interest

Zane Brown, Director General, Consumer Products Directorate, Industry Canada

Joseph Hoffman, Director of Policy, Ontario Ministry of Consumer & Commercial Relations

Round Table Discussion with Panelists and Commentators:

E. Toni Guarino, Buc, Levitt & Beardsley, International Bar Association Council

Carl Priestland, Chief Economist, American Apparel Manufacturers Association

Michael Thompson, Director, Government Relations, Whirlpool Corporation