

Summary of the US SAFE WEB Act

Background: The Internet and electronic commerce know no boundaries, and cross-border fraud and deception is a growing problem for consumers and businesses in the U.S. and abroad. **The US SAFE WEB Act provisions are needed to** help the FTC to protect consumers from cross-border fraud and deception, and particularly to fight spam, spyware, and Internet fraud and deception. The key provisions are summarized below:

- **Broadening Reciprocal Information Sharing.** (US SAFE WEB Act §§ 4(a), 6(a)) Allows the FTC to share confidential information in its files in consumer protection matters with foreign law enforcers, subject to appropriate confidentiality assurances. **Similar to** longstanding SEC, CFTC, and federal banking agency authority. **Needed to** allow the FTC to share information with foreign agencies to help them halt fraud, deception, spam, spyware and other consumer protection law violations targeting U.S. consumers. Also **needed** for the FTC to obtain, in return, foreign information required to halt such illegal practices.
- **Expanding Investigative Cooperation.** (US SAFE WEB Act § 4(b) (adding FTC Act § 6(j))) Allows the FTC to conduct investigations and discovery to help foreign law enforcers in appropriate cases. **Similar to** longstanding SEC, CFTC, and federal banking agency authority. **Needed to** allow the FTC to obtain information for foreign agencies' actions to halt fraud, deception, spam, spyware, and other consumer protection law violations targeting U.S. consumers. Also **needed** to help the FTC to obtain, in return, foreign investigative assistance in FTC cases.
- **Obtaining More Information from Foreign Sources.** (US SAFE WEB Act § 6(b)) Protects information provided by foreign enforcers from public disclosure if confidentiality is a condition of providing it. **Similar to** longstanding SEC and CFTC authority. **Needed** because, without it, some foreign law enforcers will not give the FTC information needed to halt fraud, deception, spam, and spyware.
- **Protecting the Confidentiality of FTC Investigations.** (US SAFE WEB Act § 7) Safeguards FTC investigations in a defined range of cases by (1) generally protecting recipients of Commission CIDs from possible liability for keeping those CIDs confidential; (2) authorizing the Commission to seek a court order in appropriate cases to preclude notice by the CID recipient to the investigative target for a limited time; and (3) tailoring the mechanisms available to the Commission to seek delay of notification currently required by the Right to Financial Privacy Act ("RFPA") or the Electronic Communications Privacy Act ("ECPA"), to better fit FTC cases. **Similar to** longstanding RFPA, ECPA, and securities law provisions. **Needed to** prevent notice to investigative targets that are likely to destroy evidence or to move assets offshore or otherwise conceal them, precluding redress to consumer victims.
- **Protecting Certain Entities Reporting Suspected Violations of Law.** (US SAFE WEB Act § 8) Protects a limited category of appropriate entities from liability for voluntary

disclosures to the FTC about suspected fraud or deception, or about recovery of assets for consumer redress. **Similar to** longstanding protections for financial institutions making disclosures of suspected wrongdoing to federal agencies. **Needed because** liability concerns discourage third-party businesses from alerting the FTC to suspected law violations or recoverable assets.

- **Allowing Information Sharing with Federal Financial and Market Regulators.** (US SAFE WEB Act § 10) Adds the FTC to RFA's list of financial and market regulators allowed to readily share appropriate information. The list already includes the SEC and the CFTC. **Needed to** help the FTC track proceeds of fraud, deception, or other illegal practices sent through U.S. banks to foreign jurisdictions, so they can be recovered and returned to consumer victims.
- **Confirming the FTC's Remedial Authority in Cross-Border Cases.** (US SAFE WEB Act § 3) Expressly confirms: 1) the FTC's authority to redress harm in the United States caused by foreign wrongdoers and harm abroad caused by U.S. wrongdoers; and 2) the availability in cross-border cases of all remedies available to the FTC, including restitution. **Needed to** avoid spurious challenges to jurisdiction in FTC cases and to encourage the full range of remedies for U.S. consumer victims in foreign courts
- **Enhancing Cooperation Between the FTC and DOJ in Foreign Litigation.** (US SAFE WEB Act § 5) Permits the FTC to cooperate with DOJ in using additional staff and financial resources for foreign litigation of FTC matters. **Needed because,** without additional resources to freeze foreign assets and enforce U.S. court judgments abroad, fraudsters targeting U.S. consumers can more readily use the border as a shield against law enforcement.
- **Clarifying FTC Authority to Make Criminal Referrals.** (US SAFE WEB Act § 4(b) (adding FTC Act § 6(k))) Expressly authorizes the FTC to make criminal referrals for prosecution when violations of FTC law also violate U.S. criminal laws. **Similar to** existing FTC authority to provide information to criminal authorities, a narrow express criminal referral provision in the FTC Act, and an SEC provision. **Needed because** foreign agencies that address consumer fraud and deception as a criminal (not civil) law enforcement issue would be more willing to share information if FTC has express authority to share information with criminal authorities.
- **Providing for Foreign Staff Exchange Programs.** (US SAFE WEB Act § 9) Provides for foreign staff exchange arrangements between the FTC and foreign government authorities, and permits the FTC to accept reimbursement for its costs in these arrangements. **Needed to** improve international law enforcement cooperation in cross-border matters.

- **Authorizing Expenditure of Funds on Joint Projects.** (US SAFE WEB Act § 4(b) (adding FTC Act § 6(1)), 4(c)) Authorizes the FTC to expend appropriated funds, not to exceed \$100,000 annually, toward operating expenses and other costs of cooperative cross-border law enforcement projects and bilateral and multilateral meetings. **Similar to** SEC authority. **Needed to** allow the FTC to help support valuable international cooperative organizations and projects such as the website or consumer education programs of the International Consumer Protection and Enforcement Network (ICPEN) that foster the FTC's mission.
- **Leveraging FTC's Resources Through Reimbursement, Gift Acceptance, and Voluntary and Uncompensated Services** (US SAFE WEB Act § 11) Authorizes the FTC to accept reimbursement for providing assistance to law enforcement agencies in the U.S. or abroad, and to accept gifts and voluntary services in aid of the agency's mission and consistent with ethical constraints. **Similar to** the authority of numerous regulatory agencies, including the SEC and the CFTC, and of the FTC and DOJ in the antitrust context, to accept reimbursements from foreign counterparts. **Needed to** assure that in appropriate circumstances a foreign agency bears the costs of FTC efforts on their behalf, and to enable the FTC to employ volunteers as our Canadian counterparts have done successfully for years.
- **Requiring Report to Congress.** (US SAFE WEB Act § 13) Requires the FTC to report to Congress within three years after the enactment of this Act, describing the FTC's use of its new authority and recounting the number and types of requests for information-sharing and investigative assistance, the disposition of such requests, the foreign law enforcement agencies involved, and the nature of the information provided and received. Provides for the report to include recommendations for additional legislation as appropriate. **Needed to** provide important information to Congress on FTC accountability and cross-border trends and needs.