

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION ON**

**CROSS-BORDER FRAUD**

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**Before the**

**SUBCOMMITTEE ON COMMERCE, TRADE, AND  
CONSUMER PROTECTION**

**of the**

**HOUSE COMMITTEE ON ENERGY AND COMMERCE**

**Washington, D.C.**

**September 17, 2003**

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Mr. Chairman, I am pleased to appear before the Subcommittee today to provide information on the challenge of cross-border fraud and the efforts of the Federal Trade Commission (“Commission” or “FTC”) to address this growing problem.<sup>1</sup>

The FTC is the federal government’s principal consumer protection agency, with a mandate to prohibit unfair or deceptive acts or practices and to maintain vigorous competition in the marketplace.<sup>2</sup> The Federal Trade Commission Act authorizes the Commission to file federal district court actions, which typically seek preliminary and permanent injunctions to halt deceptive activity and seek to provide redress for injured consumers.<sup>3</sup>

An increasing number of these actions involve cross-border fraud and deception, which adversely affect American consumers and businesses. These actions often involve foreign businesses and individuals, consumers, assets, or evidence. Similarly, an increasing number of consumer complaints collected in our *Consumer Sentinel* database maintained by the Commission involve either domestic consumers complaining about foreign businesses or foreign consumers complaining about domestic businesses.<sup>4</sup> Thus, we are devoting additional resources to fighting cross-border fraud within the existing legislative framework and are proposing certain legislative changes that would give us additional tools to help address the problem of cross-border fraud. Most of our proposed changes are based on authority Congress has already given to securities, antitrust, and banking enforcers in the international context.

Today’s testimony begins by describing the growth of cross-border fraud and the problems associated with this growth. It then discusses our efforts within the existing legislative framework to combat cross-border fraud. Finally, it examines the need for additional legislation to help us fight cross-border fraud and describes our legislative recommendations.

## **I. The Problem of Cross-Border Fraud**

Today, cross-border fraud operators are victimizing American consumers to an extent unknown just a few years ago, and the problem is growing worse. Globalization of trade,

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<sup>1</sup> The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.

<sup>2</sup> 15 U.S.C. § 45(a).

<sup>3</sup> See 15 U.S.C. § 53(b). The FTC also is authorized to initiate administrative proceedings to enforce the Federal Trade Commission Act. See 15 U.S.C. § 45(b).

<sup>4</sup> *Consumer Sentinel* is a database of consumer fraud complaints maintained by the FTC. Complaints are entered into the database from many sources and are accessible to more than 700 law enforcement agencies in the United States, Canada, and Australia. The database currently contains over one million complaints. See [www.consumer.gov/sentinel](http://www.consumer.gov/sentinel).

improvements in the international telephone system, and the advent of the Internet have given consumers direct access to foreign sellers. Today, there are satellite networks broadcasting advertisements around the world, with operators waiting to take orders in many languages. Telemarketers routinely call U.S. consumers from Canada. Most significantly, electronic commerce in many instances is blurring the effect of national borders.

Cross-border commerce creates new opportunities for consumers and businesses, but it also poses new challenges to consumer confidence and to law enforcement. Consumers cannot assess the credibility of many merchants located across the globe as easily as they could with local vendors, and law enforcement cannot protect consumers as easily from fraud operators who, effectively, may be out of reach.

Using Internet and long-distance telephone technology, fraud operators can strike quickly on a global scale, victimize thousands of consumers in a short time, and disappear nearly without a trace – along with their ill-gotten gains. For example, fraudulent Canadian telemarketers victimize American consumers and hide their ill-gotten gains in foreign bank accounts. Website operators victimize consumers worldwide and take down their sites when they learn they are being investigated by law enforcement. And deceptive spammers can easily hide their identity, forge the electronic path of their email messages, and send messages from anywhere in the world to anyone in the world.

#### **A. Complaint Statistics**

Not surprisingly, an increasing number of complaints collected in *Consumer Sentinel* involve international transactions. In 2002, 14 percent of the complaints collected in *Consumer Sentinel* involved either domestic consumers complaining about foreign businesses or foreign consumers complaining about domestic businesses, as compared with less than 1 percent in 1995.<sup>5</sup> Seventy-nine percent of these complaints in 2002 involved U.S. consumers complaining about foreign businesses.<sup>6</sup> The complaints include more than 24,000 complaints by U.S. consumers against foreign companies, complaining about transactions involving more than \$72 million.<sup>7</sup> The cross-border fraud schemes U.S. consumers complained about most often in 2002 involved foreign money offers, advance fee loans, prizes, sweepstakes gifts, and internet auctions.<sup>8</sup> The obstacles we face in fighting cross-border fraud leave U.S. consumers particularly vulnerable to such scams.

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<sup>5</sup> See FTC REPORT, CROSS-BORDER FRAUD TRENDS, JANUARY - DECEMBER 2002 4 (Feb. 19, 2003), available at <http://www.ftc.gov/bcp/online/edcams/crossborder/PDFs/Cross-BorderCY-2002.pdf>.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 13.

<sup>8</sup> *Id.* at 10.

## B. FTC Cross-Border Cases

In the past several years, there has been a corresponding increase in FTC cases with a cross-border component. These cases often target foreign defendants. The FTC has brought cases against defendants in Australia,<sup>9</sup> Canada,<sup>10</sup> Hong Kong,<sup>11</sup> Spain,<sup>12</sup> Switzerland,<sup>13</sup> and the United Kingdom.<sup>14</sup> Many of the cases have involved the transfer of assets to such offshore locations as the Bahamas,<sup>15</sup> the Cayman Islands,<sup>16</sup> the Cook Islands,<sup>17</sup> and Vanuatu.<sup>18</sup> The cases also frequently involve evidence located in other countries, including Canada, the Netherlands,

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<sup>9</sup> *FTC v. Pereira*, Civ. Action No. 1:99 CV 01367 (E.D. Va. filed Sept. 14, 1999), available at <<http://www.ftc.gov/os/1999/9909>>.

<sup>10</sup> *E.g., FTC v. 1492828 Ontario Inc., d/b/a First Capital Consumers Group*, Civ. Action No. 02C 7456 (N.D. Ill. filed Oct. 17, 2002), available at <<http://www.ftc.gov/opa/2002/10/firstcap.htm>>. A complete list of all cases that the FTC has brought against Canadian defendants between 1997-2002 is contained in MASS-MARKETING FRAUD: A REPORT TO THE ATTORNEY GENERAL OF THE UNITED STATES AND THE SOLICITOR GENERAL OF CANADA (May 2003), available at <<http://www.usdoj.gov/opa/pr/2003/May/remmffinal.pdf>>.

<sup>11</sup> *FTC v. Hudson Berkeley*, Civ. Action No. CV-S-02-0649-PMP-RJJ (D. Nev. filed May 7, 2002), available at <<http://www.ftc.gov/opa/2002/05/projectabsurd.htm>>.

<sup>12</sup> *FTC v. BTV Indus.*, Civ. Action No. CV-5-02-0437-LRH-PAL (D. Nev. filed Mar. 27, 2002), available at <<http://www.ftc.gov/opa/2002/04/btv.htm>>.

<sup>13</sup> *FTC v. Dr. Clark Research Ass'n*, Civ. Action No. 1:03CV0054 (N.D. Ohio filed Jan. 8, 2003), available at <<http://www.ftc.gov/opa/2003/01/drclark.htm>>.

<sup>14</sup> *FTC v. TLD Networks Ltd.*, Civ. Action No. 00-CV-906 (N.D. Ill. filed Feb. 28, 2002), available at <<http://www.ftc.gov/opa/2002/03/tld.htm>>.

<sup>15</sup> *FTC v. SlimAmerica*, Civ. Action No. 97-6072 (S.D. Fla. filed Jan. 27, 1997), available at <<http://www.ftc.gov/opa/1997/02/slim.htm>>; *FTC v. Online Communications*, Civ. Action No. CV-S-96-00055-LDG (RLH) (D. Nev. filed Jan. 23, 1996), available at <<http://www.ftc.gov/opa/1996/08/road2.htm>>.

<sup>16</sup> *FTC v. J.K. Publications, Inc.*, Civ. Action No. CV 99-0044 ABC (AJWx) (C.D. Cal. filed Jan. 5, 1999), available at <<http://www.ftc.gov/opa/1999/01/netfill.htm>>.

<sup>17</sup> *FTC v. Affordable Media, LLC*, Civ. Action No. CV-S-98-669-LDG (RLH) (D. Nev. filed Apr. 23, 1998).

<sup>18</sup> *E.g., FTC v. J.K. Publications, Inc.*, Civ. Action No. CV 99-0044 ABC (AJWx) (C.D. Cal. filed Jan. 5, 1999), available at <<http://www.ftc.gov/opa/1999/01/netfill.htm>>.

France, Germany, Mexico, and Spain.<sup>19</sup> Other cases involve individuals and businesses based in the U.S. that target both domestic and foreign consumers.<sup>20</sup>

An increasing number of these cases involve allegedly deceptive unsolicited commercial e-mail, or spam, which is often cross-border in nature.<sup>21</sup> Indeed, the Commission's law enforcement experience shows that "the path from a fraudulent spammer to a consumer's in-box typically crosses at least one international border and usually several."<sup>22</sup>

### C. Problems Faced by Law Enforcement

Despite the FTC's vigorous law enforcement activities, cross-border fraud operators continue to use national borders to facilitate their schemes. Those engaged in cross-border fraud enjoy more attractive revenue prospects and face a lower likelihood of prosecution than domestic scam artists because:

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<sup>19</sup> E.g., *FTC v. Electronic Prods. Distrib., LLC*, Civ. Action No. 02-CV-888H (AJB) S.D. Calif. filed May 7, 2002), available at <http://www.ftc.gov/opa/2002/05/projectabsurd.htm>; *FTC v. Assail, Inc.*, Civ. A. No. W03CA007 (W.D. Tex. filed Jan. 9, 2003), available at <http://www.ftc.gov/opa/2003/02/assail.htm>; *FTC v. 1492828 Ontario Inc., d/b/a First Capital Consumers Group*, Civ. Action No. 02C 7456 (N.D. Ill. filed Oct. 17, 2002), available at <http://www.ftc.gov/opa/2002/10/firstcap.htm>; *FTC v. CSCT, Inc.*, Civ. Action No. 03 C 00880 (N.D. Ill. filed Feb. 6, 2003), available at <http://www.ftc.gov/opa/2003/02/csct.htm>; *FTC v. Zuccarini*, Civ. Action No. 02C 7456.C.A. No. 01-CV-4854 (E.D. Pa. filed Sept. 25, 2001), available at <http://www.ftc.gov/opa/2001/10/cupcake.htm>; *FTC v. BTV Indus.*, Civ. Action No. CV-5-02-0437-LRH-PAL (D. Nev. filed Mar. 27, 2002), available at <http://www.ftc.gov/opa/2002/04/btv.htm>.

<sup>20</sup> E.g., *FTC v. Skybiz.com Inc.*, Civ. Action No. 01-CV-096 (N.D. Okla. filed May 30, 2001), available at <http://www.ftc.gov/opa/2001/06/sky.htm>.

<sup>21</sup> To date, the FTC has brought over 56 enforcement actions involving deceptive or fraudulent spam.

<sup>22</sup> Prepared Statement of the Federal Trade Commission, *Spam (Unsolicited Commercial E-Mail)*, Before the Senate Committee on Commerce, Science and Transportation, 108<sup>th</sup> Cong. (May 21, 2003). This conclusion is also supported by the FTC's recent initiative to educate businesses about "open relays." Open relays allow third parties to route their e-mail through servers of other organizations, thereby disguising the real origin of the e-mail. The FTC initiative, conducted in partnership with 16 other agencies in four countries, found that a significant portion of the open relays identified were located outside the United States, in countries such as China, Korea, Japan, Italy, Poland, Brazil, Germany, Taiwan, Mexico, Great Britain, Chile, France, Argentina, India, Spain, and Canada.

- They can target a larger market.
- Evidence of their scams is often spread out in different jurisdictions, and it is difficult for the relevant authorities to share that evidence. Indeed, many U.S.-based defendants purposefully use foreign third parties to perpetrate their scams in an attempt to evade U.S. law enforcement authorities.<sup>23</sup>
- It is sometimes unclear which countries have legal jurisdiction to act.<sup>24</sup>
- U.S. enforcers have extremely limited ability to impose conduct remedies on foreign defendants because most courts will not enforce injunctive orders issued in other countries.<sup>25</sup>
- The fraud operators can move money offshore, thus necessitating a foreign action to enforce a U.S. court judgment. This is time-consuming, expensive, and, in many

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<sup>23</sup> For example, in *FTC v. Zuccarini*, Civ. Action No. 01-CV-4854 (E.D. Pa. filed Sept. 25, 2001), available at <<http://www.ftc.gov/opa/2001/10/cupcake.htm>>, the defendant had initially perpetrated his Internet scheme using U.S.-based Internet Service Providers (ISPs) and domain registrars. When he found out that the FTC was investigating him, he fled the country and continued to perpetrate his scheme through ISPs in the Netherlands and domain registrars in France, Germany, and Spain.

<sup>24</sup> The FTC recently faced this situation with respect to a matter that a foreign consumer protection agency referred to us concerning a scheme run by a U.S. company in various parts of Europe. Because of its enabling legislation, the referring agency could not bring an action against a U.S. company. Upon investigation, FTC staff learned that no U.S. consumers were injured by the scheme and neither the misrepresentations nor other conduct material to the fraud occurred in the United States. Given that the jurisdictional nexus to the U.S. was unclear in this case, as well as the practical problems that litigation would have posed, FTC staff decided not to pursue the case. By structuring its operations in this manner, the entity evaded law enforcement authorities on both sides of the Atlantic.

<sup>25</sup> *FTC v. Verity International* illustrates the limits of imposing conduct remedies on foreign defendants. 140 F. Supp. 2d 313, 318 (S.D.N.Y. 2001). In that case, the individual foreign defendants failed to comply with the asset-reporting requirements of a preliminary injunction obtained by the FTC. The U.S. court held them in contempt. In arguing against the motion for contempt, defendants pointed out that the contempt order would be futile because they were unlikely to enter the United States while the contempt matter was outstanding. The court acknowledged that defendants could avoid arrest by staying outside of the United States, but granted the motion for contempt, suggesting that preventing the defendants from entering the United States was an appropriate measure in this case. This case illustrates the limits of a contempt order on foreign defendants – as a practical matter, a foreign defendant can generally avoid sanctions for contempt by staying outside the United States.

cases, futile, as many countries do not enforce U.S. court judgments obtained by government agencies.<sup>26</sup>

- Enforcers have less incentive to pursue fraud operators who victimize consumers outside their jurisdictions but leave local consumers alone.

The legislative recommendations that we make today will help to minimize some of these burdens, as further described below. In other cases, the burdens result from other countries' practices. We believe that our proposed legislation, if passed, will encourage greater reciprocity, providing an incentive for these countries to lift existing barriers to combating cross-border fraud.

#### **D. Importance of Pursuing Cross-Border Fraud Operators**

Pursuing those who victimize U.S. consumers from abroad is important to protect

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<sup>26</sup> This problem has arisen in many FTC-related cases. For example, a receiver appointed in an FTC matter recently faced difficulties in obtaining relief from an Australian court. In *Evans v. Citibank Limited & others*, Equity Division Proceedings No. 4999 of 1999 (Sup. Ct. New South Wales), the receiver was not seeking direct enforcement of an FTC judgment, but instead was attempting to use the FTC's judgment as a basis for ordering a third-party bank to transfer certain assets to the control of the receiver under a constructive trust theory. The court held that the receiver's claims were "penal" in nature and denied the receiver's claim. This matter is currently on appeal. Similarly, *United States v. Asiastrust Limited*, Plaintiff No. 57/1999, was a case challenging the defendants' transfer of funds to a Cook Islands trust to defeat the FTC's judgment in *FTC v. Affordable Media, LLC*, Civ. Action No. CV-S-98-669-LDG (RLH) (D. Nev. filed Apr. 23, 1998). The High Court of the Cook Islands construed the case (which was pled as a new action) as one involving the enforcement of a penal law. The Cook Islands court dismissed the United States' action holding that the FTC's action was one to enforce "regulatory rights and powers." "They are or have a flavour of punishment and I conclude that these are at least in part, penal provisions, and fall within the relevant principle. It is also a public law which is sought to be enforced by the state or the sovereign alone for regulatory purposes and is one which ought not be enforced here." (4 Dec. 2001 Judgment at 8). The matter ultimately was resolved by settlement and the defendants repatriated their assets to the FTC pursuant to a stipulated judgment. See also *Impediments to Digital Trade Before the House Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce*, 107<sup>th</sup> Cong. (2001) (statement of Jeff Kovar, Assistant Legal Advisor for Private International Law, Department of State) ("Most foreign judgments are already recognized and enforced in the U.S. under state law, but most of our trading partners do not usually grant the same treatment to U.S. judgments.").

consumers from the substantial harm foreign fraud operators can cause.<sup>27</sup> Moreover, consumers' concerns about fraud and deception in the global marketplace could undermine their confidence in cross-border transactions and could lead them to conclude that they should only do business with local merchants. Unaddressed, these consumer concerns could hurt legitimate businesses by shrinking the market for their products and services. If the promise of the global marketplace is to be fully realized, governments must assure consumers that they are working to keep markets free from fraud and deception.

Pursuing U.S. businesses who victimize foreign consumers is also critical. Stopping U.S.-based cross-border fraud and deception will help protect legitimate U.S. businesses from dishonest competitors, as well as the reputation of the U.S. marketplace. Cooperation is also necessary to engender reciprocity: FTC action to protect foreign consumers from fraud and deception emanating from U.S. businesses increases the willingness of foreign governments to cooperate in protecting U.S. consumers from fraud operators in their countries.

## **II. The FTC's Efforts to Fight Cross-Border Fraud and Deception**

Despite the enforcement difficulties outlined above, the FTC has continued to fight cross-border fraud and deception within the existing legislative framework, through its enforcement and policymaking initiatives. On the enforcement front, in 2002, the FTC brought approximately 20 new federal district court lawsuits involving one or more foreign defendants or foreign consumers, and continued to litigate and settle dozens of other cases involving fraud and deception that operate across national borders. In the first quarter of 2003 alone, the FTC filed new cases involving advance-fee credit cards peddled by Canadian telemarketers,<sup>28</sup> allegedly bogus international driving licenses advertised through spam email by defendants in Denmark<sup>29</sup> and other foreign countries including Israel, the Bahamas, and Romania,<sup>30</sup> and products and

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<sup>27</sup> Prepared Statement of the Federal Trade Commission, *Cross-Border Fraud: Improving Transnational Law Enforcement Cooperation: Hearing Before the Permanent Subcommittee on Investigations of the Senate Committee on Government Affairs*, 107<sup>th</sup> Cong. (June 15, 2001).

<sup>28</sup> *FTC v. STF Group Inc.*, Civ. A. No. 02 C 0977 (N.D. Ill. filed Feb. 10, 2003), available at <<http://www.ftc.gov/opa/2003/02/medplan.htm>>; *FTC v. Assail, Inc.*, Civ. A. No. W03CA007 (W.D. Tex. filed Jan. 9, 2003), available at <<http://www.ftc.gov/opa/2003/02/assail.htm>>.

<sup>29</sup> *FTC v. Carlton Press, Inc.*, Civ. A. No. 03-CV-0226-RLC (S.D.N.Y. filed Jan. 10, 2003), available at <<http://www.ftc.gov/opa/2003/01/idpfinal.htm>>.

<sup>30</sup> *FTC v. Mountain View Sys., Ltd.*, Civ. A. No. 1:03-CV-00021-RMC (D.D.C. filed Jan. 7, 2003), available at <<http://www.ftc.gov/opa/2003/02/fyi0314.htm>>.

programs sold over the Internet by defendants based in Switzerland,<sup>31</sup> Canada, the U.K., and Mexico,<sup>32</sup> that allegedly falsely claim to cure cancer, AIDS, and other serious diseases. Although we were successful in these cases, we encountered difficulties, as outlined above.

In addition to its ongoing work on investigations and cases, in October 2002, FTC Chairman Timothy J. Muris unveiled a Five-Point Plan for Fighting Cross-Border Fraud.<sup>33</sup> The Plan recognizes the importance of initiatives on both the international and domestic fronts and the need for action by both the public and private sectors. Highlights of the Plan follow:

**Developing an OECD Recommendation on Cross-Border Fraud:** FTC

Commissioner Mozelle Thompson has led the United States delegation to the Organisation for Economic Cooperation and Development's Committee on Consumer Policy since 1998 and has chaired the Committee since 2002. Under his leadership, the OECD issued Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders in June 2003. The Guidelines recognize that combating fraud and deception is an important priority for government consumer protection agencies. They represent the consensus of 30 countries on the importance of international cooperation to combat fraudulent and deceptive commercial practices. The Guidelines also provide impetus for legislative and policy reform in OECD countries for combating such practices.

**Public-Private Partnerships to Combat Cross-Border Fraud:** The FTC has issued a call to legitimate industry to help fight cross-border fraud, which hurts consumers as well as legitimate businesses. In many cases, domestic and foreign third parties, such as credit card issuers and networks, banks, and Internet service providers, can assist law enforcement by providing information about foreign fraud operators. Domestic third parties may be able to suspend domain names, telephone services, mailing services, or financial services to foreign fraud operators, who we may not be able to reach through court orders. Earlier this year, the FTC held a public workshop to explore these issues.<sup>34</sup> We are continuing to work with the private sector to follow up on some of the ideas discussed at the workshop, including better sharing of information between the private sector and the FTC. Discussions at the workshop also highlighted obstacles to public-private sector cooperation to combat cross-border fraud,

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<sup>31</sup> *FTC v. Dr. Clark Research Ass'n*, Civ. A. No. 1:03CV0054 (N.D. Ohio filed Jan. 8, 2003), available at <<http://www.ftc.gov/opa/2003/01/drclark.htm>>.

<sup>32</sup> *FTC v. CSCT, Inc.*, Civ. Action No. 03 C 00880 (N.D. Ill. filed Feb. 6, 2003), available at <<http://www.ftc.gov/opa/2003/02/csct.htm>>.

<sup>33</sup> See Timothy J. Muris, "The Interface of Competition and Consumer Protection," Prepared Remarks at the Fordham Corporate Law Institute's Twenty-Ninth Annual Conference on International Antitrust Law and Policy (Oct. 31, 2002), available at <http://www.ftc.gov/speeches/muris/021031fordham.pdf>.

<sup>34</sup> See <<http://www.ftc.gov/bcp/workshops/crossborder/index.html>>.

which some of our legislative proposals seek to overcome, as explained further below.

**Technical Assistance:** The FTC wants to ensure that developing countries do not become havens for fraud. Therefore, we have conducted training missions on consumer protection issues in various developing countries, in cooperation with and funded by the U.S. Agency for International Development. Last year, we conducted training sessions for consumer protection authorities from 13 Eastern European countries. This year, we are conducting training sessions in Peru, Romania, and the Ukraine.

**Developing and strengthening bilateral and multilateral relationships:** The FTC has undertaken several activities in this area:

- The FTC has signed consumer protection cooperation agreements with Canada, the United Kingdom, and Australia, that have enhanced our cooperation with these countries.<sup>35</sup> We are continuing to expand our law enforcement activities with these countries.
- In Canada, the Commission participates in two consumer protection enforcement task forces: *Project Emptor* with British Columbia authorities, and the *Toronto Strategic Partnership* with a wide variety of Canadian and U.S. authorities.<sup>36</sup> In the past year, the FTC has announced numerous joint law enforcement actions taken with the assistance of these task forces, including actions involving credit card loss

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<sup>35</sup> See Agreement Between the Government of the United States of America and the Government of Canada Regarding the Application of their Competition and Deceptive Marketing Practices Laws, TRADE REG. REP. (CCH) ¶ 13,503 (1995), available at <<http://www.usdoj.gov/atr/public/international/docs/uscan721.htm>>; Agreement Between the Federal Trade Commission of the United States of America and the Australian Competition & Consumer Commission On the Mutual Enforcement Assistance in Consumer Protection Matters (July 20, 1999), available at <<http://www.ftc.gov/opa/2000/07/usacc.htm>>; Memorandum Of Understanding On Mutual Enforcement Assistance In Consumer Protection Matters Between The Federal Trade Commission Of The United States of America And Her Majesty's Secretary of State for Trade And Industry And The Director General Of Fair Trading In The United Kingdom (Oct. 31, 2000), available at <<http://www.ftc.gov/opa/2000/10/ukimsn.htm>>.

<sup>36</sup> For a further discussion of these task forces, see MASS-MARKETING FRAUD: A REPORT TO THE ATTORNEY GENERAL OF THE UNITED STATES AND THE SOLICITOR GENERAL OF CANADA 31-32 (May 2003), available at <<http://www.usdoj.gov/opa/pr/2003/May/remmffinal.pdf>>; see also Prepared Statement of the Federal Trade Commission, *Cross-Border Fraud: Improving Transnational Law Enforcement Cooperation: Hearing Before the Permanent Subcommittee on Investigations of the Senate Committee on Government Affairs*, 107<sup>th</sup> Cong. (June 15, 2001).

protection,<sup>37</sup> lottery/prize scams,<sup>38</sup> advance-fee credit cards,<sup>39</sup> and bogus cancer clinics.<sup>40</sup> Just this week, the FTC's Bureau of Consumer Protection announced its participation in a new task force with authorities from Alberta, called the Alberta Partnership Against Cross-Border Fraud.

- The FTC is a member of the International Consumer Protection Enforcement Network (ICPEN), a group of consumer protection enforcement agencies from 32 countries that meets twice a year to discuss cases, investigation techniques, and other information. Seventeen ICPEN countries plus the OECD participate in *econsumer.gov*, a public website where consumers can file cross-border e-commerce complaints online, making them accessible to law enforcement agencies in the member countries. The site is available in English, French, Spanish, and German.<sup>41</sup> Complaints from *econsumer.gov* can help the FTC identify trends and wrongdoers on an international level.

In addition, the Five-Point Plan recognizes that, although there are certain activities the FTC can undertake within our existing legislative framework, new legislation is necessary to help combat the problem of cross-border fraud effectively. The remainder of this testimony focuses on the Commission's legislative recommendations.

### III. Legislative Recommendations

Despite our successes, we face daunting challenges in the battle against cross-border fraud and deception. Many of these challenges reflect the shortcomings of a legal framework developed when consumer protection was almost purely a domestic concern. In the emerging global marketplace, that framework must be expanded to allow the FTC to act with effectiveness and dispatch to protect American consumers. In testimony to Congress during hearings on spam, the Commission also emphasized the need for improvements to the FTC's law enforcement

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<sup>37</sup> *FTC v. STF Group*, Civ. Action No. 03 C 0977 (N.D. Ill. filed Feb. 10, 2003), available at <<http://www.ftc.gov/opa/2003/02/medplan.htm>>.

<sup>38</sup> *FTC v. Duraisami*, CV 03-01284-BJR (W.D. Wa., filed June 13, 2003), available at <[www.ftc.gov/opa/2003/07/duraisami.htm](http://www.ftc.gov/opa/2003/07/duraisami.htm)>.

<sup>39</sup> *FTC v. Pacific First Benefit, LLC*, Civ. Action No. 02 C 8678 (N.D. Ill. filed Dec. 2, 2002), available at <<http://www.ftc.gov/os/caselist/ca02c8678.htm>>.

<sup>40</sup> *FTC v. CSCT, Inc.*, Civ. Action No. 03 C 00880 (N.D. Ill. filed Feb. 6, 2003), available at <<http://www.ftc.gov/opa/2003/02/csct.htm>>.

<sup>41</sup> See [www.econsumer.gov](http://www.econsumer.gov).

powers to combat cross-border fraud and deception perpetrated through spam.<sup>42</sup>

Indeed, an international consensus has developed on the need for countries to improve their domestic framework for fighting cross-border fraud and deception. The OECD Guidelines discussed above specifically provide that “[m]ember countries should review their own domestic frameworks to identify obstacles to effective cross-border co-operation in the enforcement of laws designed to protect consumers against fraudulent and deceptive commercial practices, and should consider changing domestic frameworks, including, if appropriate, through adopting or amending national legislation to overcome these barriers.”<sup>43</sup> The FTC’s legislative proposals would implement this provision. Even though new legislation would not solve all of the problems in fighting cross-border fraud, it could go far to reduce some of the obstacles we face.

The FTC is proposing legislation in four areas:

- **First, the FTC is seeking to strengthen its ability to cooperate with its foreign counterparts, which are often investigating the same targets as the FTC.**

We are currently prohibited by statute from sharing certain information we obtain in our investigations with our foreign counterparts. This prohibition can hurt U.S. consumers. For example, even if both the FTC and a Canadian consumer protection agency are investigating the same Canadian telemarketer that is defrauding U.S. consumers, in many cases, the FTC cannot share information it obtains pursuant to its main investigatory tool, the Civil Investigative Demand (CID), with the Canadian agency. This is true even though a Canadian action against the cross-border telemarketer would benefit U.S. consumers.<sup>44</sup> Similarly, in one recent case, the FTC obtained an order against a spammer defrauding U.S. consumers and found that the spammer had an affiliate that was perpetrating the same scam from a foreign country, targeting both U.S. and foreign consumers. The FTC cannot share the information it obtained pursuant to a CID with its foreign counterpart. The changes we are seeking would allow us to share such information and provide investigative assistance to certain foreign agencies in appropriate cases.

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<sup>42</sup> Prepared Statement of the Federal Trade Commission, *Spam (Unsolicited Commercial E-Mail)*, Before the Senate Committee on Commerce, Science and Transportation, 108<sup>th</sup> Cong. (May 21, 2003).

<sup>43</sup> OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders C(2003)116 (June 11, 2003).

<sup>44</sup> The Commission cannot disclose “documentary material, tangible things, reports or answers to questions and transcripts of oral testimony” that are “received by the Commission pursuant to compulsory process in an investigation” without the consent of the person who submitted the information, except as specifically provided. 15 U.S.C. § 57b-2(b)(3)(C); 16 C.F.R. § 4.10(d).

- **Second, the FTC is seeking to improve its information-gathering capabilities.**

The key to combating cross-border fraud successfully is the ability to sue without tipping off investigative targets. Once notified of FTC action, targets in these types of cases often disappear and move assets offshore, beyond the reach of U.S. courts. Thus, we are seeking to improve our ability to obtain more information from third parties without requiring advance notice to our investigative targets.

Currently, we have no mechanism to require most third parties to keep CIDs confidential. Many third parties have told us that they will provide notice to the target before they will share information with us, sometimes because they believe notice may be required and sometimes even if such notice clearly is not required by law. Because of this concern, we often do not send the CIDs, thus losing a potential source of information in FTC investigations. We would like to be able to seek court orders requiring third parties to keep CIDs confidential for a finite period of time, which would improve our ability to gather information. This recommendation carefully balances law enforcement interests with privacy interests. In all cases in which we want a mandate that third parties keep CIDs confidential, we would be required to seek a court order, and the confidential treatment would be temporary. To further improve our ability to gather information, we also are seeking improvements in our ability to gather more information from federal financial regulators and foreign law enforcement agencies.

- **Third, the FTC is seeking to improve its ability to obtain consumer redress in cross-border cases by clarifying its authority to take action in such cases, and expanding its ability to use foreign counsel to pursue assets offshore.**

One of the key elements of an effective anti-fraud program is depriving wrongdoers of their ill-gotten gains, reducing the incentives to engage in fraud. To the extent that money can be returned to consumers, it reduces their injury and increases their confidence in law enforcement. Among the changes the Commission is recommending is a provision clarifying that the Commission has the authority to take action in appropriate cross-border cases and provide restitution to both U.S. and foreign consumers injured by cross-border fraud and deception. By clarifying the availability of remedies, Congress can protect Americans from foreign fraud operators and prevent the United States from becoming a haven for fraud artists targeting victims abroad. It also can send a strong signal to foreign courts considering whether to enforce an FTC money judgment when there are foreign as well as U.S. victims.

Moreover, the Commission increasingly is facing significant obstacles in obtaining the proceeds of fraud and deception from defendants who have assets abroad, beyond the reach of U.S. courts. The Commission therefore also seeks to target more resources toward foreign litigation to facilitate recovery of offshore assets to benefit defrauded U.S. consumers.

- **Finally, the FTC is seeking to strengthen its international cooperative relationships by obtaining authority to conduct staff exchanges and to provide financial support for certain joint projects.**

The FTC participates in many international projects to combat cross-border fraud, including the International Consumer Protection Enforcement Network (ICPEN), the Mexico-U.S.-Canada Health Fraud Task Force (MUCH), Project Emptor with various British Columbia authorities, and the Strategic Partnership with various Ontario authorities. The FTC also consults with foreign counterparts at bilateral and multilateral meetings. Often, it would be helpful for the FTC to provide monetary assistance to support cooperative projects and meetings of such groups. Currently, various appropriations statutes prohibit the FTC from using appropriated funds to pay any expenses of a Commission, council, board or similar group that does not have a prior and specific statutory approval to receive financial support.<sup>45</sup> The FTC's legislative proposals seek to overcome this restriction.

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Congress has already provided many of the tools that we seek to agencies such as the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC). For example, thirteen years ago, Congress expanded the SEC's powers to cooperate with foreign authorities.<sup>46</sup> At the time, the SEC faced issues analogous to those faced by the FTC today regarding the growth of international fraud and deception in electronic commerce:

The internationalization of the world's securities markets is a trend that is likely to continue at a rapid pace. The major forces driving this trend appear to be: rapid technological advances in communications and computer technology [and] the growing economic interdependence between the U.S. and its major trading partners . . . Therefore, securities regulators in each nation must work with their foreign counterparts to seek coordinated international solutions to assure fairer as well as more efficient market operations across borders.<sup>47</sup>

Since 1990, the SEC has been granted statutory authority to gather and share relevant information with its foreign counterparts. As a result of these statutory provisions, the SEC can offer significant benefits to those foreign authorities seeking reciprocal cross-border cooperation. Indeed, the SEC has signed Memoranda of Understanding (MOUs) with over 30 foreign agencies. These MOUs significantly streamline cross-border cooperation and, in some cases,

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<sup>45</sup> See Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, Division J – Treasury and General Appropriations, Title VI, § 610, 117 Stat. 11, 465 (codified at 31 U.S.C. § 1345).

<sup>46</sup> Securities Acts Amendments of 1990, Pub. L. 101-550 (1990).

<sup>47</sup> H.R. Rep. No. 101-240 at 2-3 (1990), *reprinted in* 1990 U.S.C.C.A.N. 3889-3890.

has led to helpful information-sharing legislation in other countries.<sup>48</sup> Congress has given the CFTC similar powers and mechanisms for cooperation with foreign authorities.<sup>49</sup> Through our legislative proposals, we are requesting similar authority.

We have consulted on our recommendations with other federal government agencies, including the Department of Justice, Department of State, the Federal Reserve Board, the Office of the Comptroller of the Currency, the SEC and CFTC, as well as several private companies and public interest groups, including the National Consumers League, the Electronic Privacy Information Center, and Center for Democracy and Technology. We are working closely with these entities in fashioning the legislative provisions, both to meet their concerns and to achieve our objectives.

The Commission greatly appreciates the opportunity to provide this information to the Subcommittee. We look forward to continuing to work with Congressional staff on our legislative proposals.

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<sup>48</sup> See generally Michael D. Mann & William Barry, *Developments in the Internationalization of Securities Enforcement*, 136 PLI/Corp 1999 (May 2002).

<sup>49</sup> H.R. Conf. Rep. No. 978, 102d Cong., 2d Sess. 70-71 (1992).