

**Prepared Statement of**  
**THE FEDERAL TRADE COMMISSION ON**  
**"UNSOLICITED COMMERCIAL E-MAIL"**

**Before the**  
**Subcommittee on Communication**  
**of the**  
**Senate Committee on Commerce, Science, and Transportation**  
**United States Senate**

**Washington, D.C.**  
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Mr. Chairman, I am Sheila Foster Anthony, Commissioner of the Federal Trade Commission. The Federal Trade Commission is pleased to provide testimony today on the subject of unsolicited commercial e-mail, the consumer protection issues raised by its widespread use, and the Federal Trade Commission's program to combat deceptive and fraudulent unsolicited commercial e-mail.<sup>(1)</sup>

## **I. Introduction and Background**

### *A. FTC Law Enforcement Authority*

As the federal government's principal consumer protection agency, the FTC's mission is to promote the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices, and increasing consumer choice by promoting vigorous competition. The Commission undertakes this mission by enforcing the Federal Trade Commission Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>(2)</sup> The Commission's responsibilities are far-reaching. With the exception of certain industries, this statute provides the Commission with broad law enforcement authority over virtually every sector of our economy.<sup>(3)</sup> Commerce on the Internet, including unsolicited commercial electronic mail, falls within the scope of this statutory mandate.

### *B. Concerns about Unsolicited Commercial E-Mail*

Unsolicited commercial e-mail -- "UCE," or "spam," in the online vernacular -- is any commercial electronic mail message sent, often in bulk, to a consumer without the consumer's prior request or consent. Not all UCE is fraudulent, but the Internet's capacity to reach literally millions of consumers quickly and at a low cost through UCE has been seized on by fraud operators, who are often among the first and most effective at exploiting any technological innovation. In fact, UCE has become the fraud artist's calling card on the

Internet. The staff of the Commission has reviewed a collection of over 100,000 pieces of UCE. Much of it contains false information about the sender, misleading subject lines, and extravagant earnings or performance claims about goods and services. These types of claims are the stock in trade of fraudulent schemes.

While bulk UCE burdens Internet service providers and frustrates their customers, the FTC's main concern with UCE is its widespread use to disseminate false and misleading claims about products and services offered for sale on the Internet. The Commission believes the proliferation of deceptive bulk UCE on the Internet poses a threat to consumer confidence in online commerce and thus views the problem of deception as a significant issue in the debate over UCE. Today, Congress, law enforcement and regulatory authorities, industry leaders and consumers are faced with important decisions about the roles of self-regulation, consumer education, law enforcement, and government regulation in dealing with UCE and its impact on the development of electronic commerce on the Internet.

## **II. The Federal Trade Commission's Approach to Emerging Marketplaces**

### *A. Law Enforcement*

Deceptive UCE is a small part of the larger problem of deceptive sales and marketing practices on the Internet. In 1994, the Commission filed its first enforcement action against deception on the Internet, making it the first federal enforcement agency to take such an action.<sup>(4)</sup> Since that time, the Commission has brought 36 law enforcement actions to halt online deception and consumer fraud.

The Commission brings to this task a long history of promoting competition and protecting consumers in other once-new marketing media. These past innovations have included door-to-door sales, television and print advertising, direct mail marketing, 900 number sales, and telemarketing. The development of each of these media was marked by early struggles between legitimate merchants and fraud artists as each sought to capitalize on the efficiencies and potential profits of the new marketplace. In each instance, the Commission used its statutory authority under Section 5 of the FTC Act to bring tough law enforcement actions to halt specific deceptive or unfair practices, and establish principles for non-deceptive marketing.<sup>(5)</sup> In some instances, most notably national advertising, industry took an aggressive and strong self-regulatory stance that resulted in dramatic improvements in advertising and marketing practices.<sup>(6)</sup> In other instances, at the direction of Congress or on its own initiative, the Commission has issued trade regulation rules to establish a bright line between legitimate and deceptive conduct.<sup>(7)</sup>

### *B. Monitor and Study Industry Practices*

The Federal Trade Commission closely monitors the development of commerce on the Internet. Through a series of hearings and public workshops, the Commission has heard the views of a wide range of witnesses and issued reports on the broad challenges posed by the rapid growth of the Internet and electronic commerce. In the fall of 1995, the Commission

held four days of hearings to explore the effect of new technologies on consumers in the marketplace. Those hearings produced a staff report, *Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech, Global Marketplace*.<sup>(8)</sup> The report warned of the potential for the Internet to become the newest haven for deception and fraud.

In 1995, the Commission also began its privacy initiative to explore online information practices used by Internet merchants. The Commission has held a series of public workshops to explore privacy issues and identify voluntary practices that could, if utilized, protect consumers' personally identifiable information when they visit the Internet.<sup>(9)</sup> Two weeks ago, the Commission issued *Privacy Online: A Report to Congress*, which includes an evaluation of self-regulatory efforts to protect consumers' privacy online.<sup>(10)</sup>

### **III. The Commission's Approach to Unsolicited Commercial E-Mail**

#### *A. Monitoring the Problem*

The Commission's staff has similarly studied the widespread use of unsolicited commercial e-mail and whether it poses risks to consumers online. At its June 1997 Privacy Workshop, the Commission heard discussion of three distinct UCE problems: (1) deception in UCE content; (2) economic and technological burdens on the Internet and delivery networks caused by the large volume of UCE being sent; and (3) costs and frustrations imposed on consumers by their receipt of large amounts of UCE. The Commission's immediate concern has been with deceptive UCE, and in letters dated July, 31, 1997 to Senator John McCain, Chairman, Senate Committee on Commerce, Science and Transportation and Representative Thomas Bliley, Chairman, House Committee on Commerce, the Commission pledged to use its authority to investigate and bring law enforcement actions against deceptive spammers. The Commission also asked industry and advocacy groups to study the economic and technological burdens caused by UCE and to report back on their findings. Under the leadership of the Center for Democracy in Technology, these groups have spent a year analyzing economic and technological problems and identifying possible solutions. They will present their report to the Commission in July.

Since the June 1997 workshop, Commission staff has collected and analyzed a large amount of UCE received by consumers; sent warning letters to over 1,000 senders of apparently deceptive UCE; prepared and disseminated consumer education materials; and brought law enforcement actions to halt deceptive marketing campaigns that used UCE to cause significant economic harm to consumers. Last summer, the FTC set up a special electronic mailbox reserved for UCE. With the assistance of Internet service providers, privacy advocates, and other law enforcers, staff publicized the Commission's UCE mailbox, "[uce@ftc.gov](mailto:uce@ftc.gov)," and invited consumers to forward their UCE to it. The UCE mailbox has received more than 100,000 forwarded messages to date, including 1,000 to 1,500 new pieces of UCE every day. Staff enters each UCE message into a searchable database, analyzes the data, identifies trends, and uses its findings to target law enforcement and education efforts.

The largest category of UCE in the FTC's database is chain letters, followed closely by pyramid scheme solicitations. Both schemes make money for only the first few participants. Our experience with pyramid marketing schemes supports the conclusion that 90% or more of investors are mathematically certain to lose their investment. Some chain letters masquerade as legitimate businesses, in which participants receive "reports" or other worthless items in exchange for their payment. Pyramid schemes pose as legitimate multi-level marketing companies. Fees paid by new recruits, not profits from the sale of goods, generate most of their revenue. Both pyramid schemes and chain letters are illegal.

### *B. Aggressive Law Enforcement*

The Commission has responded to the large amount of chain letter and pyramid UCE with comprehensive consumer and business education programs and tough law enforcement. For example, in October 1997, the Commission sued Nia Cano, doing business as Credit Development International and Drivers Seat Network.<sup>(11)</sup>

In that lawsuit, the Commission alleged that the defendants falsely promised that investors would receive both an unsecured VISA or MasterCard, and could earn \$18,000 a month by recruiting others into the scheme. The defendants urged participants to use bulk e-mail to solicit recruits, and an estimated 27,000 participants flooded the Internet with UCE repeating the defendants' allegedly false offer. The Commission obtained a Temporary Restraining Order and Preliminary Injunction against these defendants, freezing over \$2 million for restitution to victims. This case is still in litigation.

The staff has taken aggressive steps to deter others who use UCE to promote chain letter and pyramid schemes. Last February, with the assistance of the United States Postal Inspection Service, the Commission put more than 1,000 junk e-mailers sending UCE on notice that law enforcement agencies are monitoring UCE for deception and fraud and keeping track of the senders. The Commission sent letters warning senders that their e-mail may violate federal law, advising them of relevant laws, and inviting them to visit the FTC's web site, [www.ftc.gov](http://www.ftc.gov), for further guidance. Staff continues to monitor the UCE database to make sure that those who have been warned do not resume sending deceptive UCE. If the Commission finds that senders of deceptive UCE who have been warned continue to send deceptive messages, however, it will take appropriate action.<sup>(12)</sup>

In addition to online pyramid schemes and chain letters, the FTC's UCE database contains other categories of possibly deceptive UCE. These categories mirror schemes that have proliferated in other media: business opportunity offers and work-at-home schemes, guaranteed credit cards and loans, credit repair schemes, and diet or health products making false or unsubstantiated claims. As in the case of pyramids and chain letters, Commission staff is monitoring and has sent warnings to senders of these messages, and the Commission has brought enforcement actions against two of them.<sup>(13)</sup>

### *C. Comprehensive Consumer and Business Education*

The Commission has published three consumer publications related to UCE in the last few

months. [\*Trouble @ the In-Box\*](#) identifies some of the scams showing up in electronic in-boxes. It offers tips and suggestions for assessing whether an opportunity is legitimate or fraudulent, and steers consumers to additional resource materials that can help them determine the validity of a promotion or money making venture. To date, approximately 27,000 copies of the brochure have been distributed, and it has been accessed on the FTC's web site approximately 3,300 times.

[\*How to Be Web Ready\*](#) is a reader's bookmark that offers consumers tips for safe Internet browsing. It provides guidance for consumers on how to safeguard personal information, question unsolicited product or performance claims, exercise caution when giving their e-mail address, guard the security of financial transactions, and protect themselves from programs and files that could destroy their hard drive. A number of corporations and organizations have provided a link from their web site to the tips on the FTC's web site, including Circuit City, Borders Group Inc., Netcom, Micron, and Compaq. Approximately 22,000 copies of the bookmark have been distributed, and it has been accessed nearly 3,000 times on the FTC's web site.

The brochure [\*Net-Based Business Opportunities: Are Some Flop-portunities?\*](#) educates consumers about fraudulent Internet-related business opportunities. The brochure offers examples of the kinds of fraudulent solicitations that consumers may see in broadcast and print media, at seminars or trade shows and in UCE. The brochure also offers tips on how to avoid being scammed by fraudulent marketers making bogus offers. Nearly 18,000 brochures have been distributed, and it has been accessed approximately 1,200 times on the FTC's web site.

#### *D. Considering the Future In Light of Past Experience*

In the past year, Commission staff has investigated spamming and the extent to which consumers fall victim to misleading offers. Where staff's investigations revealed significant economic harm to recipients who responded to deceptive UCE, the Commission has taken enforcement action. While neither the Commission's UCE database nor staff's interviews with consumers constitute a representative sample of all UCE and UCE recipients, it is notable that in the Commission's experience to date, few consumers have actually lost money responding to deceptive UCE. However, a deceptive spammer can still make a profit even though very few recipients respond because the cost of sending bulk volume UCE is so low--far lower than traditional mail delivery. Whether consumers respond to deceptive UCE by either becoming victims or "flaming" senders (*i.e.*, sending angry return e-mails), forwarding their UCE to the FTC, or automatically deleting all of their UCE, the Commission is concerned that the proliferation of deceptive UCE poses a threat to consumers' confidence in the Internet as a medium for personal electronic commerce.

Analysis of the Commission's UCE database shows that well-known manufacturers and sellers of consumer goods and services do not send UCE. Rather, these merchants use *solicited* e-mail to give consumers information that they have requested about available products, services, and sales. For example, consumers may agree in advance to receive information about newly-published books on subjects of interest, online catalogues for

products or services frequently purchased, or weekly e-mails about discounted airfares.

These examples of bulk commercial e-mail sent at the consumer's request demonstrate the value of consumer sovereignty to the growth of Internet commerce. When consumers are able to *choose* the information they receive over the Internet, they seem likely to have more confidence in its content and in the sender. Conversely, when unsolicited information arrives in consumers' electronic mailboxes, the consumers who have contacted the Commission have been far less likely to engage in commerce with the sender.

As government, industry, and consumer interests examine legislative, self-regulatory, and law enforcement options at this important turning point, it is useful to be mindful of lessons learned in the past. Earlier in this decade, the advent of the first and still the most universal interactive technology, 900 number, telephone-based "pay-per-call" technology, held great promise. Unfortunately, unscrupulous marketers quickly became the technology's most notorious users. Scores of thousands of consumers wound up with charges on their telephone bills for calls to 900 numbers that they thought were free. Others were billed for expensive calls made by their children without parental knowledge or consent.

The FTC and state attorneys general brought dozens of enforcement actions to halt these schemes and warned legitimate 900 number vendors that industry practices needed to improve dramatically. Unfortunately, industry did too little to halt the widespread deception, and Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992, directing the FTC and FCC to regulate 900 number commerce by issuing rules under the Administrative Procedures Act. The regulations have forced all 900 number vendors into a standard practice of full disclosure of cost and other material terms, and have virtually eliminated the problem of deceptive 900 number advertising. All of this came at a considerable cost, however, because consumers lost confidence in pay-per-call commerce and stayed away from it in droves. Only now, some four years after federal regulations took effect, has there been growth in pay-per-call services as a means of electronic commerce.

The Commission has steadfastly called for self-regulation as the most desirable approach to Internet governance. The Commission still believes that economic issues related to the development and growth of electronic commerce should be left to industry, consumers, and the marketplace to resolve. For problems involving deception and fraud, however, the Commission is committed to law enforcement as a necessary response. Should the Congress enact legislation granting the Commission new authority to combat deceptive UCE, the Commission will act carefully but swiftly to use it.

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1. The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own.

2. 15 U.S.C. § 45(a). The Commission also has responsibilities under approximately 40 additional statutes,

*e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces approximately 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

3. Certain entities, such as banks, savings and loan associations, and common carriers, as well as the business of insurance are wholly or partially exempt from Commission jurisdiction. *See* Section 5(a)(2) of the FTC Act, 15 U.S.C. § 45(a)(2) and the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

4. *FTC v. Corzine*, CIV-S-94-1446 (E.D. Cal. filed Sept. 12, 1994).

5. Section 5 of the FTC Act, 15 U.S.C. §45, authorizes the Commission to prohibit unfair or deceptive acts or practices in commerce. Section 13(b) of the FTC Act authorizes the Commission to bring actions to enforce Section 5 and other laws the Commission enforces in United States District Courts to obtain injunctions and other equitable relief. Section 18 of the FTC Act, 15 U.S.C. § 57a, authorizes the Commission to promulgate trade regulation rules to prohibit deceptive or unfair practices that are prevalent in specific industries (§18).

6. For example, the National Advertising Division of the Council of Better Business Bureaus, Inc., operates the advertising industry's self-regulatory mechanism.

7. Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (the "Cooling-Off Rule"), 16 C.F.R. Part 429; Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435; Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("The 900-Number Rule"), 16 C.F.R. Part 308; and the Telemarketing Sales Rule Pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 C.F.R. Part 310.

8. May 1996.

9. FTC Staff Report: Public Workshop on Consumer Privacy on the Global Information Infrastructure, Dec. 1996; FTC Report to Congress: Individual Reference Services, Dec. 1997.

10. June 4, 1998. The report concluded that self-regulatory efforts, thus far, have fallen short of what is necessary to ensure adequate privacy protections on a widespread basis. The Commission recommended that Congress develop legislation to protect children's privacy online, and indicated that it would make further recommendations relating to online consumers generally later this summer.

11. *FTC v. Nia Cano*, Civil No. 97-7947-IH-(AJWx) (C.D. Cal, *filed* Oct. 29, 1997).

12. It should be noted, however, that because of the ease with which senders change screen names and e-mail addresses, and the widespread use of false routing information, it is difficult to keep track of many senders of UCE.

13. *FTC v. Internet Business Broadcasting, Inc.*, Civil No. WMN-98-495 (D.Md. *filed* Feb. 19, 1998) (Defendants' UCE and home page contained allegedly false income claims for business opportunity); *FTC v. Dixie Cooley*, Civil No. CIV-98-0373-PHX-RGS (D.Ariz., *filed* Mar. 4, 1998) (Defendant used UCE to promote an allegedly fraudulent credit repair scheme).

As these cases illustrate, the Commission's focus has been on deceptive UCE. To the extent UCE is not deceptive, the Commission's ability to challenge it may be circumscribed.