



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

October 3, 2011

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515

The Honorable Henry Waxman  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives

The Honorable Mary Bono Mack  
Committee on Energy and Commerce  
Chairman  
Subcommittee on Commerce, Manufacturing and Trade  
United States House of Representatives  
Washington, DC 20515

The Honorable G.K. Butterfield  
Committee on Energy and Commerce  
Ranking Member  
Subcommittee on Commerce, Manufacturing and Trade  
United States House of Representatives  
Washington, DC 20515

Dear Members of Congress:

As the members of the bipartisan Federal Trade Commission, we write to urge Congress to strike the sunset provision of the U.S. SAFE WEB Act of 2006. The Act, which provides the FTC with critical law enforcement tools to combat spam, spyware, fraudulent telemarketing, and other cross-border frauds that harm American consumers, will sunset in 2013 absent Congressional action. Without an immediate repeal of the sunset provision, the FTC will be hobbled in pursuing cross-border law enforcement on behalf of American consumers.

In 2006, Congress passed the SAFE WEB Act recognizing the increasing threats facing U.S. consumers in the global marketplace, involving fraudulent spam, malware, misleading health and safety advertising, privacy, and telemarketing. The Act provides enhanced law enforcement tools in four major areas that are essential to effective cross-border enforcement cooperation: (1) information sharing; (2) investigative assistance; (3) cross-border jurisdictional

authority; and (4) enforcement relationships. It gave the FTC the same types of law enforcement tools that Congress gave to the Securities and Exchange Commission and the Commodity Futures Trading Commission between 1988 and 1992. Neither the SEC legislation nor the CFTC legislation contains a sunset provision.

In the past five years, the FTC has conducted more than 100 investigations with international components, such as foreign targets, evidence, or assets. The FTC has repeatedly used the Act's authority in many of these matters. As of September 1, 2011, the FTC has completed 56 information sharing requests from 14 foreign law enforcement agencies in six countries pursuant to the SAFE WEB Act. Without the SAFE WEB Act, these information sharing requests would have been barred under the FTC Act. In addition, the FTC has issued approximately 40 civil investigative demands (equivalent to administrative subpoenas) in nearly 20 investigations on behalf of nine foreign law enforcement agencies in five countries.

As explained in our 2009 report, *The U.S. SAFE WEB Act: The First Three Years, A Report to Congress*, these efforts have been extremely effective.<sup>1</sup> Our SAFE WEB authority has improved the quantity and quality of evidence against common targets and encouraged reciprocal assistance from other countries, especially Canada, which in 2010 passed anti-spam legislation with mutual assistance provisions modeled on the SAFE WEB Act. Indeed, our SAFE WEB assistance to foreign law enforcement agencies has often led those agencies to bring actions against foreign-based fraudsters that victimize American consumers.

For example, pursuant to the SAFE WEB Act, the FTC shared evidence from its investigation in *FTC v. Atkinson* with agencies in Australia and New Zealand about a vast international spam network that peddled bogus prescription drugs, weight-loss pills, and male-enhancement products to U.S. and foreign consumers.<sup>2</sup> The network, which the anti-spam organization Spamhaus called the largest "spam gang" in the world, sent billions of spam emails. Some of the targets were based in Australia and New Zealand. The New Zealand agency, using the FTC's evidence, executed multiple search warrants that provided the FTC with further information about the scheme. It also filed an enforcement action in New Zealand and obtained several monetary settlements. The Australian agency also filed suit, obtaining injunctions and a \$210,000 penalty from an Australian court. In turn, these actions helped the FTC obtain nearly \$19 million in default judgments and led to the criminal conviction of one of the defendants. The Australian agency recognized the critical nature of the FTC's SAFE WEB assistance, noting, "This type of inter-agency, cross-jurisdictional collaboration is exactly what is required to combat the global scourge of spam."<sup>3</sup>

Despite the FTC's successes in using the SAFE WEB Act, cross-border fraud remains a significant problem for U.S. consumers. In 2010, 14 percent of the FTC's Consumer Sentinel Network fraud complaints were cross-border in nature. Of these 104,402 complaints, 29 percent were complaints by non-Canadian consumers against Canadian companies or by Canadian or foreign consumers against U.S. companies. Seventy-one percent were complaints by U.S. or Canadian consumers against companies in other countries. These figures underscore the

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<sup>1</sup> The report is available on our website at <http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf>.

<sup>2</sup> Civil Action No. 08-CV-5666 (N.D. Ill.), available at <http://www.ftc.gov/os/caselist/0723085/index.shtm>.

<sup>3</sup> Statement, Australian Media and Communications Authority, Dec. 22, 2009, available at [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_311998](http://www.acma.gov.au/WEB/STANDARD/pc=PC_311998).

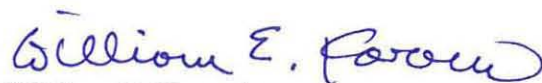
continuing need for the FTC's SAFE WEB Act authority and even greater international cooperation. To accomplish this, the FTC must be able to assure its foreign counterparts that the tools provided by the SAFE WEB Act are a permanent part of the FTC's law enforcement authority.

Five years since the Act's passage, the SAFE WEB Act has proven to be a necessary component of the FTC's cross-border fraud efforts. By striking the sunset provision now, Congress will ensure that the FTC will be in a position to continue to work cooperatively with its foreign law enforcement partners and to develop new initiatives to combat cross-border fraud and ultimately protect U.S. consumers.

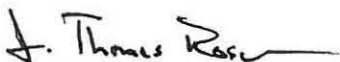
Sincerely,



Jon Leibowitz  
Chairman



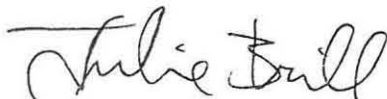
William E. Kovacic  
Commissioner



J. Thomas Rosch  
Commissioner



Edith Ramirez  
Commissioner



Julie Brill  
Commissioner

Letter also sent to: The Honorable John D. Rockefeller  
The Honorable Kay Bailey Hutchison  
The Honorable Mark Pryor  
The Honorable Patrick J. Toomey