

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION ON
"CROSS-BORDER FRAUD"**

**Before the
SUBCOMMITTEE ON INVESTIGATIONS
of the
COMMITTEE ON GOVERNMENTAL AFFAIRS,
U.S. SENATE**

Washington, D.C.

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I. Introduction

Mr. Chairman, I am Hugh Stevenson of the Federal Trade Commission's Bureau of Consumer Protection. The Federal Trade Commission is pleased to provide testimony today on its work on the subject of cross-border fraud, focusing on telemarketing fraud perpetrated against U.S. consumers by Canadian telemarketers, which has grown to be a serious problem.⁽¹⁾ This testimony describes the scope of this problem, and the complaint database and intelligence tool--*Consumer Sentinel*--that is a key source of information about this problem. We then summarize our approach to combating the problem through law enforcement and cooperative ventures, and discuss how we can make further progress in the future.

Several weeks ago, the FTC testified about Internet fraud before a House Subcommittee and noted the challenges posed when Internet scams cross borders.⁽²⁾ Telemarketing scams crossing borders pose similar challenges:

"[M]any fraud operators are able to strike quickly, victimize thousands of consumers in a short period of time, and disappear nearly without a trace."⁽³⁾

* * *

In addition to fraud proceeds moving off-shore quickly, fraudulent . . . operators may be beyond the reach of the Commission and U.S. courts, practically, if not legally. There is now limited recognition of civil judgments from country to country. Even if the Commission were to bring an action and obtain a judgment against a foreign firm that has defrauded U.S. consumers, the judgment might be challenged in the firm's home country, and the ability to collect any consumer redress might be frustrated.⁽⁴⁾

To combat cross-border telemarketing fraud, as with cross-border Internet fraud, "law enforcement must look for more effective cross-border legal remedies, and must work

cooperatively with law enforcement and consumer protection officials in other countries."[\(5\)](#)

The FTC has developed the ability to move quickly against domestic fraud, halting scams and recovering money.[\(6\)](#) Pursuing those who victimize U.S. consumers from abroad is important as well, both to address the substantial harm foreign telemarketers now cause and to develop an approach to combating fraud in the emerging global marketplace.

II. The FTC's Authority and *Consumer Sentinel* Fraud Database

A. The FTC's Law Enforcement Authority

The FTC is the federal government's principal consumer protection agency, with broad jurisdiction extending over nearly the entire economy, including business and consumer transactions on the telephone, the Internet, and elsewhere.[\(7\)](#)

The Federal Trade Commission Act's mandate is to prohibit unfair or deceptive acts or practices and to promote vigorous competition in the marketplace.[\(8\)](#) The FTC Act authorizes the Commission to halt deception in several ways, including through civil actions filed by its own attorneys in federal district court.[\(9\)](#) Typically, these court actions seek preliminary and permanent injunctions to halt deceptive activity, as well as redress for injured consumers.[\(10\)](#) Where redress is impracticable, FTC consumer protection actions generally seek disgorgement to the U.S. Treasury of defendants' ill-gotten gains.

The Telemarketing and Consumer Fraud and Abuse Prevention Act[\(11\)](#) also gives the FTC specific powers to combat telemarketing fraud. The 1995 Telemarketing Sales Rule ("TSR" or "the Rule"),[\(12\)](#) implementing the Act, requires telemarketers to identify themselves and accurately describe goods or services offered.[\(13\)](#) The TSR also specifically addresses the most common forms of telemarketing fraud. For instance, the Rule takes aim at deceptive sweepstakes promotions by requiring telemarketers to disclose before payment that "no purchase or payment is necessary to be able to win a prize or participate in a prize promotion."[\(14\)](#) The TSR also makes it a deceptive practice to misrepresent "[a]ny material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion."[\(15\)](#) In addition, the TSR deals with advance-fee loans by defining as an abusive telemarketing practice "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."[\(16\)](#)

The FTC Act also gives the agency jurisdiction over cross-border consumer transactions. Section 5(a) of the FTC Act gives the Commission authority to prohibit unfair or deceptive acts or practices "in or affecting commerce."[\(17\)](#) Section 4 of the FTC Act defines "commerce" to include that "among the several States or with foreign nations."[\(18\)](#) The Commission's jurisdiction for FTC Act violations extends to the TSR,

which the Commission can enforce "in the same manner, by the same means, and with the same jurisdiction, powers, and duties" it has under the FTC Act.⁽¹⁹⁾ The Commission has enforced the TSR against Canadian telemarketers calling into the U.S.⁽²⁰⁾

B. Consumer Sentinel

A cornerstone of the FTC's ability to act quickly and effectively against telemarketing fraud is its access to up-to-date consumer complaint information. In late 1997, the FTC established *Consumer Sentinel* as a web-based law enforcement network. That network provides law enforcement agencies in the United States, Canada and Australia with secure, password-protected access to more than 300,000 consumer complaints about telemarketing, direct mail, and Internet fraud.⁽²¹⁾ Law enforcement agencies and private organizations contribute consumer complaints to a database that is searchable by such criteria as the name, address and telephone number of a firm, the type of fraud, and the country and state or province of the consumer. The National Association of Attorneys General, the National Consumers League, Better Business Bureaus, the U.S. Postal Inspection Service, and Canada's Phonebusters are leading partners with the FTC in this project.

One part of *Consumer Sentinel*, which is accessible only to law enforcement officials, provides consumer complaint data and other intelligence about particular wrongdoers.⁽²²⁾ More than 320 law enforcement agencies have signed up for access,⁽²³⁾ which enables users to share information, avoid duplication of efforts, and formulate rapid responses to new fraud schemes.⁽²⁴⁾ In addition to the site available only to law enforcers, *Consumer Sentinel* now also has a public website⁽²⁵⁾ that provides general statistics about fraud and identity theft. Accompanying this testimony as an appendix is a statistical report on cross-border fraud, which is an example of the kind of trend data that this joint project can produce.

Building on the success of *Consumer Sentinel*, and as part of its overall strategy to combat cross-border fraud, the FTC recently unveiled *econsumer.gov* in conjunction with 12 other countries.⁽²⁶⁾ This pilot project will allow law enforcers from around the world to access a database of consumer complaints specifically about cross-border Internet transactions. Consumers worldwide can visit the *econsumer.gov* website and use one of four languages (English, French, German, and Spanish) to enter e-commerce complaints about foreign companies.⁽²⁷⁾ Law enforcement agencies from participating countries will have access to the complaints through a password-protected website. This site also will allow government officials to communicate with consumer protection law enforcers from other countries, to notify each other of ongoing investigations, and to receive information about recent actions. In addition to an online complaint form, the public *econsumer.gov* site will provide important consumer information (for example, tips for shopping safely online) as well as contact information for consumer protection agencies in IMSN countries.

III. The Nature and Causes of Cross-Border Telemarketing Fraud

A. Magnitude, Growth, and Geographical Distribution of Canadian Telemarketing

Cross-border telemarketing fraud is a serious problem and appears to be growing. Last year, 71% of the cross-border complaints collected in *Consumer Sentinel*--more than 8,300 of them--were by U.S. consumers against Canadian companies. Appendix, p. 2.(28) Such U.S. consumer complaints accounted for reported dollar losses of \$5.3 million in 1999, \$19.5 million in 2000, and a projected \$36.5 million in 2001 based on complaints we have received during the first part of the year. Appendix, p. 3.(29) The percentage of reported complaints and percentage of reported dollar loss from fraud originating in Canada is also increasing. *Id.* Complaints come from all over the United States. Appendix, p. 14.

The Toronto (Ontario), Montreal (Quebec), and Vancouver (British Columbia) areas have generated the largest number of U.S. consumer complaints, and the three provinces of Ontario (42%), Quebec (33%), and British Columbia (17%) account together for 92% of *Consumer Sentinel's* U.S. consumer complaints against Canadian companies during 2000. Appendix, p.7. These are the main Canadian population centers and appear to house a growing number of companies engaged in telemarketing fraud.

Of course, cross-border fraud is not a one-way problem. About 12% of the cross-border complaints in *Consumer Sentinel* for 2000 were by Canadian consumers against U.S. companies. Leading complaint categories here were travel, Internet auction, and sweepstakes, with the travel complaints mostly against businesses in Florida. Appendix, pp. 2, 11-13. In the past ten years, FTC legal actions have resulted in the return of more than \$730,000 in redress to more than 2,700 Canadian consumers.

B. Subject Matter of Complaints by U.S. Consumers Against Canadians

The highest number of complaints from U.S. consumers against Canadian companies concern sweepstakes, advance-fee loans, lotteries, and Internet auctions. Appendix, p. 6. Sweepstakes and related prize promotion complaints accounted for 51% of these complaints. Advance-fee loan complaints accounted for about 24% of the complaints, and lotteries accounted for about 6%. Appendix, p. 4. Moreover, 61% of the dollar loss U.S. consumers reported about sweepstakes, advance-fee loans, and lotteries overall involved Canadian companies. While Internet auctions also accounted for about 6% of these complaints, they accounted for only about 1% of the dollar loss. Appendix, p. 6.

1. Sweepstakes

Sweepstakes schemes and related prize promotion pitches can take several forms. Often telemarketers "guarantee" that consumers have won valuable prizes or gifts, such as vacations or automobiles, but require victims to submit payment for nonexistent shipping, taxes, customs, or bonding fees. Some schemes never provide consumers with any prize or gift, while others provide inexpensive items, often called "gimme gifts" or "cheap gifts."

According to *Consumer Sentinel* statistics for 2000, sweepstakes complaints against Canadian entities represented more than \$15 million in losses to U.S. consumers. That represents 78% of reported economic injury to U.S. consumers due to Canadian-based fraud. Appendix, p. 5. Quebec, Ontario, and British Columbia were the top three company locations for sweepstakes complaints (followed by New York, Florida, and California).

2. Advance-Fee Loans

In advance-fee loan cases, telemarketers seek out people with bad credit and offer them loans or credit cards in exchange for fees paid upfront. Those who are offered loans typically never receive them; those who are offered credit cards usually get only a standard application form or generic information on how to apply. Most advance-fee loan telemarketers get consumers to pay the upfront fee by persuading them that they are certain or nearly certain to receive loans. Fees range from \$25 to several hundred dollars. Telemarketers often assure consumers that they will receive a refund in the unlikely event that a loan is not forthcoming. After paying the fee, however, consumers either never hear from the telemarketer again or they get a form letter from a "turndown room" that credit has been denied.[\(30\)](#)

The losses U.S. consumers reported from this type of scheme were almost \$1.2 million for 2000. For this type of scheme, Ontario generated the highest number of complaints by company location during 2000, causing 35% of the economic injury (followed by Florida, California, and New York); Quebec ranked fifth.

3. Foreign Lottery Schemes

In lottery scheme cases, telemarketers offer consumers the opportunity to "invest" in tickets in well-known foreign lotteries, such as those in Canada and Australia. *Consumer Sentinel* statistics show that 62% of U.S. consumer complaints about lottery scams are against Canadian companies, which reportedly caused more than \$1.2 million in losses. British Columbia, Quebec, and Ontario were the top complaint locations and were responsible for approximately 52% of the economic injury to consumers resulting from this scam.

4. Breakdown of Complaints by Canadian Province

The breakdown of consumer complaints varies by company location. Half of the *Consumer Sentinel* complaints filed by U.S. consumers against Ontario companies are for advance-fee loan scams, and a third of the complaints are for sweepstakes. Appendix, p. 9. By contrast, over half of the complaints lodged by U.S. consumers against companies in British Columbia are for sweepstakes, and 18% of the complaints are for lottery scams. Appendix, p. 10. In Quebec, the vast majority of complaints by U.S. consumers, 83%, are about sweepstakes fraud. Appendix, p. 8.

C. Obstacles to Cross-Border Enforcement

The main obstacles to cross-border law enforcement efforts against telemarketing fraud are the difficulties of obtaining information about foreign targets and enforcing domestic remedies in foreign jurisdictions. Canadian law enforcement agencies share with their U.S. counterparts a commitment to address fraud problems in which most of the victims are Americans. Nevertheless, cross-border telemarketing fraud continues to be a significant problem. Difficulties in investigating foreign targets and enforcing remedies against them are routine in any international law enforcement effort, and fraudulent Canadian telemarketers that target U.S. consumers take advantage of these difficulties to shield themselves from law enforcement.

1. Information Gathering Roadblocks

When the FTC pursues domestic targets, it has access to numerous sources of information about incriminating evidence and assets. Such sources include third party suppliers, former employees, public records, express package companies, telephone and Internet service providers, mail drops, and financial institutions. Moreover, the FTC has the authority to issue compulsory process to obtain evidence, both from third parties and directly from prospective defendants.⁽³¹⁾ Our ability to obtain information about foreign targets is much more limited. In addition, as a practical matter, we generally lack the ability to compel foreign targets or third parties to respond to information requests.

The Commission's ability to obtain information through Canadian authorities is also restricted. In recent years, the United States and other nations, including Canada, have entered into bilateral mutual legal assistance treaties ("MLATs") for the cross-border exchange of information.⁽³²⁾ However, these treaties are limited to criminal matters. Because we lack criminal authority, the FTC cannot use the U.S.-Canada MLAT to obtain information from Canadian law enforcement agencies about fraud schemes operating in Canada.⁽³³⁾

Further, both U.S. and Canadian law impose certain limits on information sharing. While there are substantive reasons why the law protects the confidentiality of certain information, these protections may in some cases hinder cross-border fraud prosecutions.

On the Canadian side, Section 29 of the Canadian Competition Act, for example, prohibits our most direct Canadian counterpart, the Competition Bureau of Industry Canada, from communicating to any person other than a "Canadian law enforcement agency or for the purposes of the administration or enforcement of th[e] Act:" (1) the identity of any person from whom information was obtained and (2) any information obtained through an order to produce a written return or a record or by a search warrant, unless that information has been made public.⁽³⁴⁾ On the U.S. side, the nondisclosure provisions of the FTC Act also prevent us from sharing certain categories of investigative information with our foreign counterparts. Thus, absent permission from the source of information, the FTC is not authorized to share with foreign law enforcers: (a) trade secrets or confidential commercial information; (b) information received by the Commission pursuant to compulsory process in a law enforcement investigation; and (c) information received by the Commission in a law enforcement investigation, which is marked confidential but is

submitted voluntarily in lieu of compulsory process.[\(35\)](#)

The breadth of the FTC's information-sharing constraints hampers our ability to coordinate cross-border law enforcement. Although existing cross-border agreements allow for the sharing of some information--including in particular consumer complaints--there is other information the FTC is unable to share. The FTC must withhold the affected categories of information from Canadian law enforcement authorities even when the same information may be shared with domestic law enforcement agencies,[\(36\)](#) and even when sharing it would significantly advance the FTC's own investigation. While the FTC is unable to share significant information with our foreign counterparts, other U.S. agencies may be able to do so if they are covered by an MLAT similar to the U.S.-Canada MLAT.[\(37\)](#) Even in instances when Canadian law enforcement agencies may have authority to obtain and share information in some of these categories with FTC staff, the FTC may not reciprocate.[\(38\)](#)

2. Inability to Enforce Injunctive and Equitable Relief

The FTC has significant powers and resources to stop fraudulent practices, such as the ability to obtain injunctions and asset freezes. These powers enable us to stop fraudulent conduct soon after we obtain evidence of it, to preserve wrongfully obtained assets, and to provide redress to as many aggrieved consumers as possible. However, while our authority exists before U.S. judges, it does not extend to foreign courts. Canadian telemarketers are aware of these jurisdictional limitations and take advantage of them.

The FTC has obtained personal jurisdiction over Canadian defendants in U.S. courts because of their transactions in the U.S. However, so long as defendants and their assets remain in Canada, preliminary and permanent injunctions issued by U.S. courts cannot reach them to halt their conduct.[\(39\)](#)

Moreover, if the FTC obtains a judgment for consumer redress, enforcement of that judgment across borders is difficult at best because asset freezes reach only property held in or controlled by someone in the United States. Accordingly, faced with a typical FTC action, Canadian defendants can often continue to operate their deceptive businesses in Canada, defrauding U.S. residents and dissipating assets.

IV. FTC Initiatives to Combat Cross-Border Telemarketing Fraud

Eight years ago, the FTC appeared before a Senate Subcommittee to address this issue and discussed some of the same obstacles we continue to face today.[\(40\)](#) The FTC has overcome at least some of the difficulties and limitations involved in the prosecution of cross-border telemarketing by building strong cooperative relationships with other domestic and foreign law enforcement agencies. Moreover, the FTC has undertaken several initiatives to fight these international scams: cases; conferences and workshops; regional partnerships; cooperation agreements; *Consumer Sentinel*; and consumer education.

A. Cross-Border Telemarketing Cases

As discussed above, the most common telemarketing scams emanating from Canada and targeting U.S. consumers are sweepstakes, advance-fee loans, and foreign lotteries. The FTC has filed law enforcement actions against Canadian enterprises operating each of these scams. Other cases, discussed in a separate section below, have been brought either as cooperative endeavors with Canadian officials or as proceedings in which the FTC has been involved in supporting legal action by another agency.

Prize Promotions: The FTC's first initiative against cross-border prize promotions was part of "Project Jackpot," a joint investigation that resulted in 56 enforcement actions against 79 defendants in 17 states in 1996. Included in Operation Jackpot was an FTC case against a company located in Montreal, Canada. An Ohio federal district court issued a temporary restraining order, including an asset freeze, and ultimately, a default judgment for \$1 million (Canadian).[\(41\)](#)

Advance-Fee Loans: The FTC, in cooperation with the British Columbia Ministry of Attorney General, filed its first case against a Canadian advance-fee loan telemarketer in 1996. This case, which was part of Operation Loan Shark, a series of cases targeting advance-fee loan telemarketers, was the first to utilize the newly promulgated Telemarketing Sales Rule against a foreign boiler room.[\(42\)](#) In later advance-fee loan sweeps, additional Canadian telemarketers were targeted.[\(43\)](#)

Lotteries: In 1997, the FTC filed an action against a Las Vegas firm that allegedly provided credit card processing services for approximately 60 Canadian-based lottery telemarketers.[\(44\)](#) The FTC filed two cases against foreign lottery telemarketers in 1997[\(45\)](#) and in 1998[\(46\)](#) against Vancouver B.C. boiler rooms.

Two other FTC's cases filed in U.S. Courts have challenged Canadian-based telemarketing companies selling foreign lottery tickets to U.S. residents. In the largest of these, the FTC's case [\(47\)](#) was joined with a parallel case filed in Canadian courts by the Department of Justice's Office of Foreign Litigation, which sought and obtained a *Mareva* injunction[\(48\)](#) freezing the defendants' assets in Canada (which was entered by an Ontario Provincial Court in December 1998). In October 2000, the U.S. District Judge entered a redress judgment for \$19.7 million. Canadian litigation is pending for recovery of any available redress funds. The FTC filed a second action in U.S. District Court against another Toronto-based lottery scam.[\(49\)](#) Litigation in that case is ongoing.

The FTC has also filed several cases against fraudulent enterprises operating in Canada, each involving credit card loss protection scams. These matters are also ongoing.[\(50\)](#)

B. Conferences and Workshops

The FTC has focused law enforcement attention on the cross-border fraud problem by working with other partners to hold various cross-border workshops on telemarketing fraud. The FTC and the Vermont Attorney General's Office held the first one in 1996, in

Burlington, Vermont, with workshops after that in Vancouver and Toronto. Other U.S. participants at these workshops included various state Attorneys General, U.S. Attorney's Offices, the FBI, the U.S. Postal Inspection Service, the Customs Service, the Secret Service, and several private sector organizations. Canadian attendees included Industry Canada, the RCMP, provincial law enforcement agencies, and metropolitan police departments.

The FTC also participated in the joint U.S.-Canada working group that prepared a 1997 report entitled "United States - Canada Cooperation Against Cross-Border Telemarketing Fraud." The report, requested by President Clinton and Prime Minister Chrétien, contained key joint recommendations about battling cross-border telemarketing fraud, which we continue to implement today.⁽⁵¹⁾ The report included recommendations that regional task forces be encouraged to cooperate across the international border to the maximum extent possible; that governments and agencies examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access; and that the scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing fraud cases.

C. Regional Partnerships

Consistent with the 1997 report, a central part of the FTC's approach to fighting cross-border telemarketing fraud has been the Ontario and British Columbia regional partnerships. These partnerships allow us to battle more efficiently different scams on different fronts by forging relationships with the respective Canadian provincial authorities. Through the *Ontario Strategic Partnership*, the FTC's Midwest Regional office has worked closely with Ontario authorities on Toronto-based telemarketing. Through *Project Emptor*, our Northwest Region office has coordinated actions with the authorities from British Columbia on the scams that emerge from Vancouver boiler rooms.

1. The Ontario Strategic Partnership

One of the cross-border fraud conferences mentioned above took place in Toronto in February of 2000. At this conference, participants discussed the fact that Toronto boiler rooms had begun avoiding sales to Canadians and were instead targeting Americans. The conference also made it clear that there would be a real benefit in a more active partnership targeting resources against such scams. As a result of this conference, the FTC, the Toronto Police Service, the Ontario Ministry of Consumer and Business Services, and the Competition Bureau of Industry Canada formed the Ontario Strategic Partnership to work together and combat cross-border fraud. Each agency pledged to provide resources to this common enterprise and to work together supporting each other's cases. Since that time, the partnership has added several new partners, including the U.S. Postal Inspection Service and the Ontario Provincial Police.

Since the Partnership began, Ontario criminal officials have closed down 62 companies.

At least 84 people have been arrested. These Canadian actions have resulted in the return of roughly \$660,000 (Canadian), a majority of it to U.S. consumers. On our side of the border, the U.S. Postal Inspection Service obtained indictments in federal court in Harrisburg, Pennsylvania, and the defendants will be extradited to the U.S. for trial.

These legal actions resulted from agencies working together, contributing personnel, information, and necessary equipment. These measures combined to support the overall effort. For example, one of the FTC's major roles in the Partnership is to provide information from *Consumer Sentinel* to the Partnership members to identify and locate existing frauds, as well as victims and witnesses. FTC investigators help locate and interview victims and obtain their statements. If needed, the FTC pays costs in appropriate cases for witnesses to travel to Toronto to testify in Canadian criminal proceedings. Moreover, the FTC is handling refunds to American victims that are ordered by Canadian criminal courts.

In addition, the members of the partnership have shared investigative information, where legally possible. The FTC has assisted Canadian law enforcers through our investigatory tools and contacts. At the same time, our Canadian partners have been instrumental in helping us develop our investigations. The partnership members work together on a daily basis, and the success of this effort has brought additional partners to the effort. In recognition of these results, the Strategic Partnership won the 2001 Consumer Agency Achievement Award by the National Association of Consumer Agency Administrators.

2. British Columbia B Project Emptor

The FTC and the British Columbia Ministry of Attorney General have conducted joint investigations against cross-border telemarketing scams since 1996. The initial focus of these combined efforts was advance-fee loan telemarketers operating from Vancouver, with the FTC and British Columbia Attorney General bringing parallel civil actions in their respective countries. The result was injunctive relief effectively putting the targets out of business and the return of about \$50,000 in uncashed checks and money orders to U.S. consumers.⁽⁵²⁾

In 1997, these coordinated law enforcement efforts turned to the growing number of Vancouver lottery scams targeting U.S. consumers. The FTC sued a Nevada corporation⁽⁵³⁾ that allegedly was providing credit card processing and foreign lottery ticket purchase services for at least 60 Canadian-based lottery telemarketers. The FTC, British Columbia Attorney General, and the Attorney General of Washington then brought civil actions against two lottery telemarketing operations.⁽⁵⁴⁾ These actions yielded about \$2 million in redress for U.S. consumers.

In 1998, the RCMP's Vancouver Commercial Crime Section, with support from the British Columbia Attorney General, formed the Project Emptor Task Force.⁽⁵⁵⁾ At that time, RCMP information suggested the existence of more than 150 separate lottery telemarketing rooms in the Vancouver area. The FTC supported formation of Project Emptor and continues to conduct cross-border investigations as part of the task force.

Project Emptor has allowed U.S. and Canadian authorities to engage in joint target identification; joint investigations; coordinated case filings and asset recovery efforts in the U.S. and Canada; sharing of post-filing discovery; and coordinated preliminary and permanent relief.⁽⁵⁶⁾ FTC investigators obtain statements from U.S. victims, while RCMP and British Columbia Attorney General investigators develop evidence about the schemes' operators.⁽⁵⁷⁾

In 1999, Project Emptor investigators learned of a new lottery scheme, in which consumers are purportedly sold government savings bonds issued by the National Savings Bank of England. Bond holders are supposedly entered in a monthly lottery in which all of the bond interest is awarded to a few bond holders. While such bonds do exist, telemarketers in Canada are not authorized to sell them and, because the bonds have a lottery feature, it is illegal to sell them in the United States. Project Emptor participants have taken action against this new scheme.⁽⁵⁸⁾ Finally, addressing yet another emerging fraud scheme, the FTC and the British Columbia Attorney General, again acting through Project Emptor, recently filed parallel civil actions against a British Columbia company telemarketing credit card loss protection and debt consolidation packages to U.S. consumers.⁽⁵⁹⁾

D. Cooperation Agreements

Since the early 1990s, we have been building a cooperative relationship with our Canadian counterparts. In 1995, the FTC and Department of Justice signed an agreement with the Canadian Director of Investigation and Research (the predecessor to the Deputy Commissioner for the Fair Business Practices Branch at Industry Canada's Competition Bureau). Addressing deceptive marketing practices, the FTC and Canada's Director of Investigation and Research agreed (a) to cooperate in the detection of cross-border deceptive marketing practices; (b) to inform each other as soon as practicable of investigations and proceedings involving such practices; (c) to share information relating to the enforcement of deceptive marketing practice laws (subject to confidentiality laws); and (d) to coordinate, in appropriate cases, enforcement against deceptive marketing practices with a trans-border dimension.⁽⁶⁰⁾

E. Consumer Sentinel

The FTC developed the Consumer Sentinel system described above to respond to the types of information-sharing challenges articulated by the 1997 joint working group on U.S.-Canada cross-border fraud. Using this central repository of complaints and its other intelligence tools, the FTC and its many partners have developed evidence and coordinated law enforcement actions. This tool has permitted law enforcers to better spot trends, and pursue the con artists more quickly and more efficiently.

1. Consumer Education

As a complement to its law enforcement efforts, the FTC's consumer education initiatives warn consumers about the perils of telemarketing fraud. The FTC has developed the

Partnership for Consumer Education, a cooperative umbrella effort among corporations, trade groups, consumer organizations, and federal agencies that have joined with us to help provide effective consumer education materials against fraud. With the assistance of our partners, the Commission has arranged for messages about fraud to appear in such diverse locations as websites, sales catalogs, billing statements, classified advertising, and even on public transit buses. Our consumer education materials, which are available online,⁽⁶¹⁾ advise consumers to hang up on any telemarketer who tells them that they need to send in payment to receive an award or to participate in a prize promotion. We also warn consumers to never divulge their credit card numbers or checking account numbers over the phone unless they have agreed to make a purchase and they understand the terms of the purchase. Our materials also stress that consumers should be on the alert for high-pressure tactics or demands from a telemarketer for an immediate purchasing decision.

V. Moving Ahead to Improve Law Enforcement Against Cross-Border Fraud

The FTC has made significant strides in developing ways to combat cross-border telemarketing fraud over the past few years. To keep pace with this emerging problem, however, we need to address the main challenges described above: improving information sharing and working for more effective cross-border legal remedies. We also need to increase our cooperative efforts with our Canadian counterparts.⁽⁶²⁾ Improvement in these areas will help us more quickly halt ongoing frauds and recover money for consumers, important complements to the deterrent effect of criminal prosecutions.

Further development of Consumer Sentinel is key to improving information sharing and cooperation efforts. The Subcommittee, in requesting testimony, indicated it is "particularly interested in the current status, impact, and prospects of programs such as the FTC's Consumer Sentinel system." We have described the project's current status and impact above. As to its prospects, we are working towards the following goals:

1. Encourage greater use of Consumer Sentinel. Having signed up more than 320 U.S. and Canadian law enforcement agencies, we are now working to increase the number of individual law enforcement users. We are also encouraging users to participate more fully. For example, we recently established a toll-free line to improve customer service and make Consumer Sentinel more accessible to users.
2. Increase the number of law enforcement agencies contributing complaints to *Consumer Sentinel*'s in order to strengthen its role as the central repository of consumer fraud complaints. In this regard we are very pleased to note that a major partner, the U.S. Postal Inspection Service, recently signed an agreement to transfer its consumer fraud complaints into *Consumer Sentinel*, and has started doing so.
3. Use *Consumer Sentinel* to improve communication in order to better identify enforcers and targets. We have developed and implemented "alert" technology so that law enforcers can notify each other about investigations. The more that law

enforcers use this technology, the more useful it is.

4. Encourage other law enforcers to seek additional ways to become active partners in *Consumer Sentinel*. For example, we note that the U.S. Postal Inspection Service has detailed an Inspector to be the program's manager for a year, and the U.S. Secret Service has recently detailed an agent to work on the identity theft component of the *Consumer Sentinel* system. We believe that all agencies involved benefit from these kinds of close working relationships.

We also suggest exploring how the existing legal framework for sharing information might be modified to facilitate cooperation in cross-border cases. We make no specific legislative recommendations on this subject here; but we note that there are several issues worth considering carefully, including what additional kinds of information might be shared and under what circumstances. It is also important to consider the implications of various possible vehicles that might be used to accomplish such information sharing. Mutual legal assistance legislation, for example, might allow the FTC and Canadian law enforcers to enter into agreements to share a broader range of investigatory information.⁽⁶³⁾ Such information could include data about fraud artists and victims, but could also be broad enough to permit U.S. and Canadian agencies to assist in each others' investigations through the use or enforcement of compulsory process. Another possibility to consider is whether new or existing treaties might provide a vehicle for information sharing.⁽⁶⁴⁾ We would be glad to work with the Subcommittee, and with other members of the U.S.-Canada cross-border fraud working group, to explore these issues further.

We also need to explore how to make our civil remedies more effective across borders. For example, to prevent fraud from being profitable, we need better tools to be able to pursue ill-gotten gains. Thus, we should consider how U.S. and foreign courts, subject to appropriate procedural safeguards, might better enforce preliminary and permanent monetary relief issued by courts of another nation against cross-border consumer scams.⁽⁶⁵⁾ Such mutual judgment recognition is another area where we would be glad to work with the Subcommittee, and with other members of the U.S.-Canada cross-border fraud working group, to seek effective solutions.

The Commission appreciates the opportunity to provide its views on cross-border fraud. I would be happy to answer any questions.

Endnotes:

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

2. *Hearing on Internet Fraud Before the Subcomm. on Commerce, Trade, and Consumer Protection of the House Comm. on Energy and Commerce*, 107th Cong. (2001) (Statement of the Federal Trade Commission, presented by Eileen Harrington, Associate Director of the Division of Marketing Practices, Bureau of Consumer Protection).

3. *Id.*

4. *Id.*

5. *Id.*

6. For example, the FTC regularly reviews complaint data to spot emerging problems and has brought some cases mere days after detecting fraudulent activity. *See, e.g., FTC v. Benoit*, No. 3:99 Civ. 181 (W.D.N.C. 1999) (just over a week from initial complaints to filing), and *FTC v. Verity Int'l Ltd.*, No. 00 Civ. 7422 (S.D.N.Y. filed Oct. 2, 2000) (filing accomplished in about three weeks).

7. The FTC has limited or no jurisdiction over some specified types of entities and activities that are regulated by other parts of the government. These include banks, savings associations, and federal credit unions; regulated common carriers; air carriers; non-retail sales of livestock and meat products under the Packers and Stockyards Act; certain activities of nonprofit corporations; and the business of insurance. *See, e.g.,* 15 U.S.C. §§ 44-46 (FTC Act); 15 U.S.C. § 21 (Clayton Act); 7 U.S.C. § 227 (Packers and Stockyards Act); 15 U.S.C. §§ 1011-1015 (McCarran-Ferguson Act).

8. 15 U.S.C. § 45(a).

9. 15 U.S.C. §§ 45(a), 53(b).

10. The second proviso of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission to seek injunctive relief to enjoin violations of Section 5(a): "Provided further, That in proper cases the Commission may seek, and after proof, the court may issue, a permanent injunction . . ." *See also FTC v. Evans Products Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985). Once Congress has invoked the equitable power of the federal courts, the full breadth of a court's authority is available, including such ancillary final relief as rescission of contracts and restitution. *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-7 (9th Cir. 1989); *FTC v. H.N. Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982); *see also Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 291-92 (1960). Further, a court may grant a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of final effective ultimate relief. *H.N. Singer*, 668 F.2d at 1111-12.

11. 15 U.S.C. § 6101.

12. 16 C.F.R. § 310 (1995).

13. 16 C.F.R. §§ 310.4(d)(1), (3).

14. 16 C.F.R. § 310.4(d)(4).

15. 16 C.F.R. § 310.3(a)(2)(v).

16. 16 C.F.R. § 310.4(a)(4).

17. 15 U.S.C. § 45(a)(2).

18. 15 U.S.C. § 44.

19. 15 U.S.C. § 6105(b).

20. *See, e.g., FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00C-7886 (N.D. Ill. filed December 18, 2000); *FTC v. 9013-0980 Quebec Inc.*, Civ. No. 1:96CV-1567 (N.D. Ohio filed July 18, 1996); and *FTC v. Ideal*

Credit Referral Services Ltd., C96-0874R (W.D. Wash. filed June 5, 1996).

21. This system is an expansion of the earlier NAAG-FTC Telemarketing Complaint System.

22. For instance, *Consumer Sentinel* allows members to submit an "Auto Query" search on scams or possible targets, which allows them to get an e-mail notice whenever responsive new complaints are entered in the database.

23. Law enforcement agencies that have signed up for access include a number of federal agencies with which we have had close working relationships, such as the Federal Bureau of Investigation, the Postal Inspection Service, the Secret Service, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. They also include State Attorneys General, local district attorneys, and sheriffs, as well as the following Canadian authorities: Alberta Municipal Affairs, Housing & Consumer Affairs Division; Alberta Securities Commission; British Columbia Gaming, Audit & Investigation Office; British Columbia Ministry of Attorney General; Competition Bureau, Industry Canada; Edmonton, Alberta Police Service; New Brunswick Attorney General; North West Territory Community Operations; Ontario Ministry of Consumer & Commercial Relations; Ontario Provincial Police, Anti-Rackets Section; Ontario Waterloo Regional Police; Royal Canadian Mounted Police (RCMP); Vancouver, British Columbia Police Department; and Toronto Police Department.

24. In addition, *Consumer Sentinel* gives members the ability to search the National Tape Library, a clearinghouse of undercover tape recordings of telemarketing sales calls, and to make a tape request online; it also provides an Internet resource bookmark list, a library of telemarketing pleadings, newsletters, and other information useful to law enforcers.

25. <http://www.consumer.gov/sentinel>.

26. The FTC and 12 partners from other countries launched econsumer.gov at the last meeting of the International Marketing Supervision Network (IMSN) on April 24, 2001. The IMSN is a membership organization consisting of the consumer protection authorities of 29 countries, and representatives from the European Commission and the Organisation for Economic Cooperation and Development (OECD). Most IMSN member countries are OECD members. The main objective of the IMSN is to facilitate practical action to prevent and redress deceptive marketing practices with an international component. The IMSN fosters cooperative efforts to tackle consumer problems connected with cross-border transactions in both goods and services. It facilitates the exchange of information among the participants for mutual benefit and understanding.

The other participating IMSN countries are Australia (Australian Competition and Consumer Protection Commission), Canada (Competition Bureau, Industry Canada), Denmark (Danish Consumer Ombudsman), Finland (Finnish Consumer Ombudsman), Hungary (Hungarian General Inspectorate for Consumer Protection), Korea (Korea Consumer Protection Board), Mexico (Procuraduria Federal del Consumidor), New Zealand (New Zealand Ministry for Consumer Affairs), Norway (Norwegian Consumer Ombudsman), Sweden (Swedish Consumer Ombudsman), Switzerland (State Secretariat for Economic Affairs of Switzerland), and the United Kingdom (Office of Fair Trading).

27. The online complaint form accommodates international address information and foreign currencies.

28. A large percentage of these cross-border complaints are contributed to *Consumer Sentinel* by Canada's Project Phonebusters.

29. Dollars paid are equated with dollar loss, given that consumers receive products or services of either no or minimal value from the types of schemes involved.

30. The Telemarketing Sales Rule prohibits these practices. 16 C.F.R. § 310.4(a)(4).
31. 15 U.S.C. § 57b-1(c)(1).
32. The United States has 19 MLATs in force with foreign governments. In addition to facilitating information sharing, the treaties include the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process.
33. Treaty on Mutual Legal Assistance In Criminal Matters, Mar. 18, 1985, U.S.-Can., 24 I.L.M. 1092.
34. Competition Act, R.S.C., Part II, § 29 (1985) (Can.).
35. 15 U.S.C. § 46(f) (trade secrets and confidential commercial information), 57b-2(b) (compulsory submissions). To avoid creating a disincentive to voluntary cooperation with Commission investigations, the Commission has extended comparable protection to materials submitted voluntarily, in lieu of compulsory process, in a law enforcement investigation and designated confidential. 16 C.F.R. § 4.10(d). *See also* 15 U.S.C. § 57b-2(f) (FOIA exemption for such materials).
36. 15 U.S.C. §§ 46(f), 57b-2(b)(6).
37. *See* U.S. - Canada Treaty on Mutual Assistance in Criminal Matters, signed 3/18/85; entered into force January 24, 1990, 100th Cong., 2d Sess, Treaty Doc. 100-14; Exec. Rpt. 100-28; Exec. Rpt. 101-10; 24 ILM 1092-1099, July 1985, No. 4.
38. For example, the British Columbia Attorney General is authorized to share investigational information obtained through compulsory process with the Commission staff working on Project Emptor investigations (discussed below), but FTC staff may not share similar investigational information obtained by the Commission with the British Columbia Attorney General staff assigned to Project Emptor.
39. Contempt of court has not generally been treated as an offense subject to extradition.
40. *Hearing on International Telemarketing Fraud Before the Subcomm. on Regulation and Government Affairs of the Senate Comm. on Governmental Affairs*, 99th Cong. (1993) (Statement of the Federal Trade Commission presented by Christian S. White, Acting Director of the Bureau of Consumer Protection).
41. *FTC v. 9013-0980 Quebec Inc.*, ("*Incentive International*"), CV-1567 (N.D. Oh. filed July 18, 1996). The FTC has been unable to collect on this judgment, illustrating the problems outlined above regarding foreign enforcement of judgments.
42. *FTC v. Ideal Credit Referral Serv. Ltd.*, No. C96-0874R (W.D. Wash. filed June 5, 1996).
43. *See e.g. FTC v. Walton*, No. CIV98-0018 PCT SMM (D. Ariz. filed Jan. 6, 1998). In the Commission's most recent advance-fee loan sweep, Operation Advance Fee Loan 2000, three criminal cases were filed against advance-fee loan boiler rooms by Canadian law enforcement authorities.
44. *FTC v. Woofter Investments Corporation*, CV-S-97-00515-LDG (RLH) (D. Nev. April 28, 1997).
45. *FTC v. Pacific Rim Pools International*, C97-1748 (W.D. Wash., Nov. 7, 1997).
46. *FTC v. Win USA Service, Ltd.*, No. X99 0006 (W.D. Wash Nov. 3, 1998).

47. *FTC v. Windermere Big Win Int'l Inc.*, No. 98C 8066 (N.D. Ill. Sep. 7, 1999).

48. A *Mareva* injunction is a creature of British common law, and such actions are available in British Commonwealth countries. Although each country has developed different laws concerning the application and scope of the action, they are all referred to generically as "*Mareva* injunctions." The name derives from the landmark 1975 case of *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, 1 All E.R. 213 (1975) (C.A.) in which the English Court of Appeal granted an injunction to freeze the assets of a defendant prior to judgment because there was a danger of asset dissipation. A 1987 survey showed that *Mareva* injunctions have been granted in Australia, New Zealand, Canada, Malaysia, Hong Kong and Singapore. See R. Ough, *The Mareva Injunction and Anton Piller Order: Practice and Precedents* (1987).

49. *FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00C-7886 (N.D. Ill. filed December 18, 2000).

50. *FTC v. 1306506 Ontario Ltd.*, No. 00-CV-0906A(SR) (W.D.N.Y. filed Oct. 23, 2000).

51. Report of The United States-Canada Working Group on Telemarketing Fraud (1997), available at <http://www.usdoj.gov/criminal/uscwgrtf/index.html>.

52. *FTC v. Ideal Credit Referral Serv. Ltd.*, No. C96-0874R (W.D. Wash. filed June 10, 1996); *FTC v. Gary Walton*, No. CIV98-0018 PCT SMM (D. Ariz. filed Jan. 6, 1998).

53. *FTC v. Woofter Investment Corporation*, CV-S-97-00515-LDG (RLH) (D. Nev. April 28, 1997).

54. *FTC v. Pacific Rim Pools International*, C97-1748R (W.D. Wash., Nov. 7, 1997).

55. An analogous task force, Project Colt, was organized in Montreal by the RCMP and various U.S. and Canadian agencies.

56. Thus, in 1998 the FTC, the states of Washington, Arizona, and Pennsylvania, and the British Columbia Ministry of Attorney General took action against two Vancouver lottery schemes, obtaining injunctions, and in one case getting about \$325,000 in consumer redress. *FTC v. Win USA Service, Ltd.*, Civil Action No. C98-1614Z (W.D. Wash. filed Nov. 13, 1998, final order issued Feb. 5, 2001); *Commonwealth of Pennsylvania v. Systems 3 Marketing* (M.D. Penn., filed Dec. 14, 1998).

57. Starting last year, the Los Angeles FBI Office and the U.S. Attorney's Office in Los Angeles added an important new component to Project Emptor. FBI agents stationed in Vancouver assist in conducting civil and criminal investigations, while the U.S. Attorney's Office in Los Angeles has successfully prosecuted and incarcerated a number of Canadian telemarketers.

58. *FTC v. B.B.M. Inv., Inc.*, No. C00-0062 (W.D. Wash. filed on Jan. 13, 2000); *FTC v. Canada Prepaid Legal Serv., Inc.*, No. 00-CV-02080 (W.D. Wash. filed Dec. 11, 2000). The British Columbia Attorney General has filed a parallel action in the second matter. The FTC, the Department of Justice's Office of Foreign Litigation, and the receiver in the FTC's case have jointly filed a civil common law fraud action in British Columbia against the defendants seeking the return of assets to the U.S. on behalf of defrauded U.S. consumers. At about the same time, the U.S. Attorney's Office in Los Angeles obtained an indictment against the central figure behind the telemarketing network. That person was arrested in Vancouver and now faces extradition to the United States.

59. *FTC v. OPCO Int'l Agencies, Inc.*, No. CO1-2053R (W.D. Wash. filed Feb. 21, 2001).

60. 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 (Aug. 3, 1995),

reprinted at 4 Trade Reg. Rep. (CCH) ¶ 13,503.

61. See <http://www.ftc.gov/ftc/consumer.htm>.

62. As we have said in the analogous context of cross-border Internet fraud, "U.S. law enforcement must look for more effective cross-border legal remedies, and must work more cooperatively with law enforcement and consumer protection officials in other countries." See fn.2 *supra*.

63. See, e.g., the International Antitrust Enforcement Assistance Act ("IAEAA"), which enables the FTC and Department of Justice to negotiate assistance agreements on behalf of the United States with foreign counterparts in the antitrust area. 15 U.S.C. §§ 6201 *et seq.* Under the IAEAA, antitrust agencies can agree to share confidential information and to use compulsory process to obtain information for each other. Another example is the provision enabling the Securities and Exchange Commission to share with foreign agencies information about its investigations involving securities fraud. 15 U.S.C. § 78x(c). Congress passed this statute in response to concerns about international securities fraud. H.R. Rep. No. 101-240 (1989). An example of an analogous foreign statute is the Australian Mutual Assistance in Business Regulation Act ("MABRA"), which in certain circumstances allows a Commonwealth regulator to use compulsory process on behalf of a foreign government or agency. Mutual Assistance in Business Regulation Act, 1992, Part 1, Section 5 (Austl.), available at <http://scaletext.law.gov.au/html/comact/7/3928/top.htm>.

Canadian authorities are currently considering legislative authority to enter into similar agreements. See Bill C-23 (An Act to Amend the Competition Act and the Competition Tribunal Act), 1st Session, 37th Parliament, 49-50 Elizabeth II (2001).

64. Cf. U.S.-Canada working group report, at 20, discussing mutual legal assistance treaties ("MLATs"), recommending "that the scope of the existing Canada-U.S. mutual legal assistance arrangements be considered to determine whether these might be expanded to deal more effectively with telemarketing-fraud cases." Report of The United States-Canada Working Group on Telemarketing Fraud, p. 20 (1997), available at <http://www.usdoj.gov/criminal/uscwgrtf/index.html>.

65. The goal of mutual recognition of such judgments was recognized by an intergovernmental forum of twenty-nine countries in the 1999 Guidelines for Consumer Protection in the Context of Electronic Commerce issued by the Organisation for Economic Cooperation and Development. See <http://www.ftc.gov/opa/1999/9912/oeecd2.htm>. Part Four recommends that "Member countries should . . . Co-operate and work toward developing agreements or other arrangements for the mutual recognition and enforcement of . . . judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct."

Note that the October 1999 Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters, being negotiated by the Hague Conference on Private International Law, contains provisions that would arguably provide for some degree of cross-border enforcement of our asset freezes and monetary redress judgments. It does not provide for cross-border enforcement of our injunctive orders. A copy of the Preliminary Draft Convention can be obtained from the Hague Conference website at <http://www.hcch.net>.