

**Oral Statement of Commissioner Jon Leibowitz¹
for April 10, 2007 Oversight Hearing Testimony
Before the Senate Commerce, Science, and Transportation Committee**

Good morning, Chairman Inouye, Vice Chairman Stevens, Senators Dorgan and DeMint, and members of the Committee. I am pleased to appear before you today to talk about the technology issues that the Commission is currently examining. Let me highlight just three: spyware; spam; and telephone pretexting. All are Internet-related in one way or another.

First, spyware. The Commission has brought eleven spyware and adware cases in the past two years. Our initial cases involved hard-core spyware that, for example, hijacked Internet browsers, made CD-ROM trays open and close, and caused computers to slow down or crash.

Recently we've begun to attack nuisance adware – disruptive adware placed on people's computers without notice or consent. These actions reaffirm several critical principles: that consumers' computers belong to them, not the software distributor; that buried disclosures do not suffice; and that the consumer must be able to uninstall unwanted software.

Our recent settlements with Zango and Direct Revenue illustrate these principles. Among other things, the two companies offered consumers free content and software – without, we allege, adequately disclosing that downloading these items would result in the installation of adware. That adware generated an eye-popping number of pop-up ads – 6.9 billion by Zango alone. In both these cases we obtained strong injunctive relief: the companies agreed to give clear notice and obtain express consent from consumers prior to installation; provide a reasonable means to uninstall the software; and monitor their affiliates. The two companies will also give up a total of \$4.5 million in ill-gotten gains. The Commission will continue to make spyware a priority, and we are happy to work with you on any legislation.

Second, spam. The Commission has brought almost 90 cases targeting spam in the last ten years – many of those filed after the CAN SPAM Act gave us the ability to sue those who "assist or facilitate" spam distribution and the authority to seek civil penalties, both tremendously helpful as we fight the spam epidemic. As you know, spam goes beyond mere annoyance – it is being used as a vehicle for pernicious conduct such as phishing scams, viruses, and spyware. This summer, the Commission will host a workshop to examine how spam has evolved and what stakeholders can do to address it. Filtering technology is a big part of the solution, but rest assured we will continue to bring spam cases.

More than half of spam and spyware, by the way, is transmitted from other countries. Your Committee's leadership in passing the US SAFEWEB Act gave us important new authority to share confidential information with our foreign law enforcement counterparts so that we can

¹ The views expressed do not necessarily reflect those of the Commission or any other Commissioner.

work more effectively to help Americans who are harmed from abroad.

Third, telephone pretexting. In May 2006, well before the Hewlett-Packard story became national news, the Commission filed five complaints against Web-based operations that obtained and sold consumers' confidential telephone records to third parties in violation of the FTC Act. To date, the Commission has resolved two cases with consent orders that impose strong remedies, including bans on obtaining or selling phone records, prohibitions against pretexting to obtain other personal information, and disgorgement of profits. Last year, a law making pretexting a criminal offense was enacted. But there is still a need for legislation that would close the gap and give the Commission authority to seek civil penalties against pretexters.

Finally, the sad truth is that Internet malefactors understand technology; to keep pace with them, we need to continually educate ourselves. Last November, the FTC convened hearings on "*Protecting Consumers in the Next Tech-Age*." We heard from more than 100 technology leaders about trends that may not be here today but will affect our lives tomorrow. Panelists addressed viral marketing, social networking, and user generated content – which holds tremendous promise for consumers but raises serious perils for parents. These hearings will help us anticipate ways in which new technologies can be misused – and develop new ways to use technology to benefit consumers.

To do either, of course, we also need to work with our oversight committees, so thank you again for the opportunity to testify. I am happy to answer your questions after my colleagues are finished.