

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION
on
Reauthorizing the U.S. SAFE WEB Act of 2006
Before the
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C.
July 12, 2012

I. INTRODUCTION

Chairman Bono Mack, Ranking Member Butterfield, and members of the Subcommittee, I am Hugh Stevenson, Deputy Director for International Consumer Protection at the Federal Trade Commission (“FTC” or “Commission”).¹ I appreciate the opportunity to present the FTC’s testimony in support of renewing the authority that Congress granted to the FTC in the U.S. SAFE WEB Act of 2006. Without Congressional action, the Act will sunset in December 2013.

Congress passed the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (“U.S. SAFE WEB Act,” “SAFE WEB Act,” or “Act”)² to enhance FTC enforcement against cross-border fraud threatening American consumers in the global marketplace. The Act arms the FTC with key enforcement tools to combat Internet scams, fraudulent telemarketing, spam, spyware, and other cross-border misconduct that harms our consumers. In this Act, Congress gave the FTC enforcement tools similar to those long available to the Securities and Exchange Commission and the Commodity Futures Trading Commission.³

¹ The views expressed in this statement represent the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily represent the views of the Commission or any Commissioner.

² Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (“U.S. SAFE WEB Act”), Pub. L. No. 109-455, 120 Stat. 3372 (2006) (codified in scattered sections of 15 U.S.C. and 12 U.S.C. § 3412(e)). A copy of the public law is available at <http://www.gpo.gov/fdsys/pkg/PLAW-109publ455/pdf/PLAW-109publ455.pdf>.

³ See Securities Acts Amendments of 1990, Pub. L. 101-550, 104 Stat. 2713 (1990); see also Futures Trading Practices Act of 1992, Pub. L. No. 102-546, § 302, 106 Stat. 3590, 3622 (1992). Neither the SEC legislation nor the CFTC legislation contained a sunset provision. Accordingly, over the past 22 years, the SEC has used its cross-border enforcement powers to develop strong enforcement cooperation arrangements — including a multilateral memorandum of understanding under the auspices of the International Organization of Securities Commissions (IOSCO) — based on its statutory authority to collect and share investigatory information when there are suspicions of securities laws violations in foreign jurisdictions. This has allowed the SEC to pursue foreign securities frauds that harm American investors. The CFTC has engaged in similar efforts. Moreover, since passing the SAFE WEB Act, Congress has given similar authority to the Consumer Product Safety Commission. See Consumer Product Safety Improvement Act of 2008 - Public Law 110- 314, codified at 15 U.S.C. § 2078.

To continue to protect American consumers in a global economy, the FTC believes it is critical that Congress reauthorize the law enforcement tools provided by the U.S. SAFE WEB Act. Every FTC Commissioner who has addressed the issue — three Democrats, three Republicans, and an independent — has supported reauthorization of the Act.⁴

This testimony first describes the problem of cross-border fraud and provides a brief history of the Act. It then describes how the FTC has used the Act's enforcement tools to protect U.S. consumers, particularly in four key areas: (1) information sharing; (2) investigative assistance; (3) cross-border jurisdictional authority; and (4) enforcement relationships. Finally, it discusses the ongoing cross-border challenges and the continuing need for the SAFE WEB Act.

II. THE CROSS-BORDER FRAUD CHALLENGE AND PASSAGE OF THE U.S. SAFE WEB ACT

Globalization of trade, improvements in international telecommunications, outsourcing, and the advent of the Internet have created unprecedented new opportunities for consumers and businesses. But these developments have also posed new problems for the FTC and American consumers. The problems for American consumers, described in prior FTC testimony,⁵ have ranged from traditional scams that thrived online, such as pyramid schemes and business operations making false product claims, and aggressive advance-fee loan, foreign lottery, and sweepstakes telemarketing schemes, to Internet-enabled frauds like spoofed emails, web

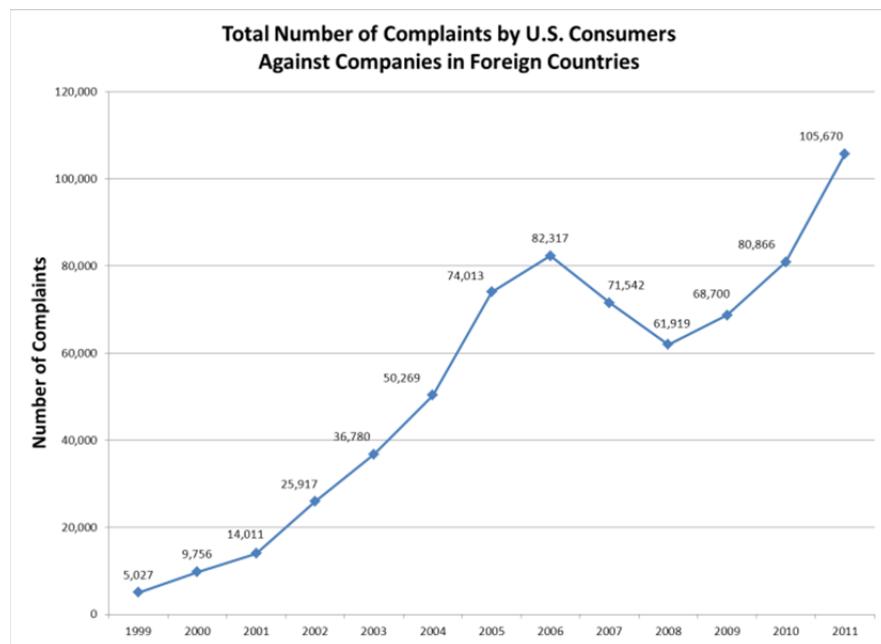
⁴ All five of the current Commissioners support reauthorization. Previously, in 2011, all five Commissioners then serving, including former Commissioner William Kovacic, wrote to the leadership of the FTC's authorizing House and Senate committees to urge renewal. In 2009, all four Commissioners then serving, including former Commissioner Pamela Jones Harbour, voted for the 2009 FTC report recommending reauthorization. Similarly, five Commissioners unanimously recommended passage of what became the SAFE WEB Act in a 2005 report to Congress. *See* discussion in section II, *infra*.

⁵ *See* Hearing on Internet Fraud Before the Comm. on Finance, 107th Cong. (2001) (statement of the Federal Trade Commission), available at <http://www.ftc.gov/os/2001/04/internetfraudstate.htm>; 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), available at <http://www2.ftc.gov/os/2001/05/internetfraudtmy.htm>; Hearing on Cross Border Fraud Before the Subcomm. on Investigations of the Sen. Comm. on Governmental Affairs, 107th Cong. (2001) (statement of the Federal Trade Commission), available at <http://www.ftc.gov/os/2001/06/cbftest.htm>.

addresses, and computer system scans. The challenges for the FTC and other law enforcers have included the global reach and speed of the Internet; the ability of scammers to cloak themselves in anonymity; the ease of moving ill-gotten gains to offshore asset havens; and the roadblocks to information sharing and cooperation created by national laws and borders.⁶

Cross-border fraud is an ongoing problem. The FTC's *Consumer Sentinel* database, which combines consumer fraud complaints received by an array of enforcement agencies and other organizations,⁷ suggests the scope of the problem:

- Between 2006 and 2011, almost half a million U.S. consumers (471,014) complained about transactions involving more than \$1.4 billion paid to businesses in other countries.⁸
- The number of U.S. consumer complaints against foreign businesses exceeded 100,000 in 2011 alone:



⁶ *Id.*

⁷ The Consumer Sentinel Network is a secure online database of millions of consumer complaints, available only to civil and criminal enforcement agencies, that provides immediate and secure access to fraud, identity theft, Internet, telemarketing (including Do Not Call), and other consumer-related complaints. See <http://www.sentinel.gov>. Note that complaints are included in the data by date of consumer complaint. Some organizations, however, transfer their complaints to the Consumer Sentinel Network after the end of the calendar year. As a result, reported totals and percentages may vary compared to previous years' reports.

⁸ See Consumer Sentinel Network cross-border fraud reports for the calendar years 2002 to 2011, available at <http://www.ftc.gov/sentinel/reports.shtml>.

- Cross-border complaints have accounted for more than 10% of all *Consumer Sentinel* fraud complaints every year since 2000, with a high of 22% in 2006 and 13% for each of the last three years. These numbers likely underestimate the scope of the problem, as this complaint count includes only those instances where consumers report a foreign address.⁹
- U.S. consumers complain about foreign businesses from an increasingly broad range of countries. In 2002 more than 55% of such complaints were about Canadian businesses; in 2011 more than 85% were about businesses in other foreign countries.¹⁰

In 2005, the FTC sent a legislative recommendation to Congress to meet these challenges and enhance the FTC's enforcement against cross-border fraud.¹¹ The FTC also submitted a report to Congress that detailed the types of misconduct involved and the harms its victims experienced.¹² On December 8, 2006, Congress passed the SAFE WEB Act,¹³ which was signed into law on December 22, 2006.¹⁴ The Act required the FTC to report on experience with the Act after three years, and included a seven-year sunset.¹⁵

In 2009, the FTC submitted the required three-year report to Congress, detailing how the agency had used its new authority under each provision of the Act to protect consumers in the global economy.¹⁶ The 2009 report noted the “significant role the Act has played in facilitating cross-border cooperation in investigations and enforcement proceedings, along with the growing need for continued cooperation to combat new and existing global fraud,” and requested that

⁹ In some instances the company address provided by the consumer actually is a mail drop in the consumer’s country rather than the physical location of the company in a foreign country. In other cases, the consumer does not know whether the location is in the U.S. or abroad, for example in dealing with a website, email, or phone contact.

¹⁰ See Consumer Sentinel Network cross-border fraud reports for 2011 and 2002, available at <http://www.ftc.gov/sentinel/reports/annual-crossborder-reports/crossborder-cy2011.pdf> and <http://www.ftc.gov/sentinel/reports/annual-crossborder-reports/crossborder-cy2002.pdf>.

¹¹ FTC, *The US SAFE WEB Act — Protecting Consumers from Spam, Spyware, and Fraud: A Legislative Recommendation to Congress* (June 2005), available at <http://www.ftc.gov/reports/ussafeweb/USSAFEWB.pdf>.

¹² *Id.*

¹³ See Statement of Federal Trade Commission Chairman Deborah Platt Majoras on Passage of the US SAFE WEB Act by the 109th Congress, available at <http://www.ftc.gov/speeches/majoras/061211statementUSSafeweb.pdf>.

¹⁴ See Statement by Federal Trade Commission Chairman Deborah Platt Majoras on US SAFE WEB Act Being Signed Into Law by President George W. Bush, available at <http://www.ftc.gov/opa/2006/12/safeweblaw.shtm>.

¹⁵ See Act, §§ 13, 14.

¹⁶ See FTC, *The U.S. SAFE WEB Act, The First Three Years: A Report to Congress* (Dec. 2009), available at <http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf>.

Congress strike the sunset provision.¹⁷ Following this report, in October 2011 the FTC's five Commissioners submitted letters to congressional leaders, including to the leaders of this Subcommittee, urging repeal of the sunset provision and permanent reauthorization of the SAFE WEB Act.¹⁸

III. FTC USE OF SAFE WEB ACT TOOLS

The FTC has used the SAFE WEB Act's tools to protect American consumers from cross-border threats robustly and responsibly. Some numbers tell the story:

- The FTC has conducted more than 100 investigations with international components, such as foreign targets, evidence, or assets, and has filed more than 50 cases involving cross-border components, since January 2007. The FTC has used the Act's authority in many of these matters, and in related actions brought by other U.S. and foreign enforcement agencies.
- The FTC has provided evidence in response to 63 information-sharing requests from 17 foreign law enforcement agencies in nine countries as of mid-2012. This evidence sharing was possible only because of the authority granted by the Act.
- The FTC has issued 52 civil investigative demands (equivalent to administrative subpoenas) in 21 investigations on behalf of nine agencies in five countries, agencies that in many cases were investigating frauds targeting Americans.
- In cases relying on the SAFE WEB Act, the FTC has to date collected more than \$10 million in restitution for injured consumers, despite the challenges of collecting money from defendants in foreign jurisdictions, and has stopped frauds costing American consumers hundreds of millions of dollars.

Even more important, the Act is key to strengthening a culture of mutual assistance that enables law enforcers to achieve greater results working together than they ever could alone.

Tracing cause and effect in each case of cooperation and reciprocity is difficult, but one example of such cooperation and resulting enforcement actions is Operation Tele-PHONEY. There the

¹⁷ *Id.* at 20.

¹⁸ See Commission Letter to the Honorable Fred Upton, Henry Waxman, Mary Bono Mack, and G.K. Butterfield, U.S. House of Representatives Committee on Energy and Commerce, Requesting Repeal of the Sunset Provision of the U.S. SAFE WEB Act of 2006 (Oct. 3, 2011), available at <http://www.ftc.gov/os/closings/111003safeweblettercongress.pdf>.

FTC, armed with SAFE WEB Act authority, worked together with U.S. and Canadian law enforcers to orchestrate a telemarketing enforcement sweep with 180 actions overall, including criminal actions against more than 90 defendants and several Canadian actions. Moreover, the 13 FTC actions brought as part of the sweep involved more than half a million consumers defrauded by unscrupulous telemarketers, resulting in losses of more than \$100 million, and the agency estimated that as a result of the law enforcement actions consumers would save approximately \$30 million over the following year.¹⁹ Another example is the work of the Toronto Strategic Partnership, which includes the U.S. Postal Inspection Service, the Royal Canadian Mounted Police, and other Canadian civil and criminal enforcement agencies, which since 2000 has involved hundreds of arrests, hundreds of search warrants, and the shutting down of scams cheating U.S. and foreign consumers out of hundreds of millions of dollars.²⁰ The SAFE WEB Act enables the FTC to cooperate more fully in this kind of crucial partnership activity.

This cooperation has directly benefited U.S. consumers. The Act has improved the quantity and quality of evidence that the FTC can use against common targets, and has encouraged reciprocal assistance from enforcement agencies in other countries, especially Canada, which in 2010 passed a law with mutual assistance provisions modeled on the SAFE WEB Act.²¹ This enables the FTC to act more quickly and effectively in shutting down

¹⁹ See <http://www.ftc.gov/opa/2008/05/telephoney.shtm>.

²⁰ See <http://www.ftc.gov/opa/2008/01/canada.shtm>.

²¹ The Canadian law, which vests three agencies with powers to cooperate on fraud, deception, spam, and privacy, was passed in December 2010 and is expected to enter into force later this year. More information is available from the Government of Canada at <http://fightspam.gc.ca/eic/site/030.nsf/eng/home>. At the time the Canadian legislation was under consideration, Canadian officials cited the U.S. SAFE WEB Act as a model for the type of legislation that was required for effective international cooperation. See Konrad von Finckenstein, Chairman, Canadian Radio-television and Telecommunications Commission, Speech to the Standing Committee on Industry, Science, and Technology (June 18, 2009), available at <http://www.crtc.gc.ca/eng/com200/2009/s090618.htm> (advocating for an amendment that would give his agency power to obtain and share information with authorities in foreign countries, such as the United States, that have reciprocal legislation).

egregious frauds and putting the defendants out of business and under court order, while at the same time helping foreign agencies to bring actions against foreign-based fraudsters that victimize American consumers.

The Act in particular enhances the FTC's consumer protection enforcement authority²² in four key areas: (1) information sharing; (2) investigative assistance; (3) cross-border jurisdictional authority; and (4) enforcement relationships.²³

A. Information Sharing

The Act authorizes the FTC to share confidential information in its files with foreign law enforcement agencies, subject to certain statutory safeguards.²⁴ This enforcement tool has proven particularly useful.

In one of the first uses of this enforcement tool, the FTC shared evidence with enforcers in Australia and New Zealand about an international spam network that peddled bogus prescription drugs, weight-loss pills and male-enhancement products to U.S. and foreign consumers. The network, which the anti-spam organization Spamhaus called the largest “spam gang” in the world, sent billions of spam emails.²⁵ Using this evidence, the New Zealand agency executed multiple search warrants, 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 further evidence and nearly \$19

²² The Act's enforcement tools are not available for competition cases. *See* Act, §§ 4 (b), 6 (a).

²³ The Act also contains important confidentiality-related provisions and other enforcement tools enhancing the FTC's ability to work with both U.S. and foreign agencies, as detailed in the agency's 2009 report to Congress.

²⁴ *See* 15 U.S.C. §§ 46(f), 57b-2(b)(6). The foreign agency must fall within the FTC Act's definition of foreign law enforcement agency. *See* 15 U.S.C. § 44 (defining “law enforcement agency” as “any agency . . . of . . . a political subdivision of a foreign state . . . that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters”). The requesting agency must certify that the information will be maintained in confidence and will be used only for official law enforcement purposes. Also, the requested material may only be used in connection with investigation and enforcement targeting possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by a law administered by the FTC.

²⁵ *See* Spamhaus News, available at <http://www.spamhaus.org/news/article/638/herbalking-principals-indicted-by-ftc-and-new-zealand>.

million in default restitutionary judgments in its own civil case, and led to the criminal conviction of one of the defendants.²⁶ As the Australian agency put it, “This type of inter-agency, cross-jurisdictional collaboration is exactly what is required to combat the global scourge of spam.”²⁷

More recently, the FTC used the Act’s information sharing provisions to help build its case against a Canadian and several related defendants who victimized nearly four million consumers—most of them Americans. The FTC alleged that the defendants lured consumers with “free” trial offers for weight-loss pills, teeth whiteners, health supplements, a work-at-home scheme, access to government grants, free credit reports, and penny auctions, and then charged them substantial and recurring fees on their credit cards. The FTC used the SAFE WEB Act to share information about the case with Canadian law enforcers, including the Competition Bureau and the Royal Canadian Mounted Police, which in turn provided investigative assistance to the FTC. The case resulted in the entry of U.S. court injunctions and monetary judgments.²⁸

B. Investigative Assistance

The Act also permits the FTC to provide investigative assistance in consumer protection matters to foreign law enforcement agencies for fraudulent and deceptive commercial practices, and other practices “substantially similar” to those prohibited by FTC law.²⁹ If such requests meet the requirements of the Act,³⁰ the FTC may issue compulsory process for documents or

²⁶ See *FTC v. Atkinson*, No. 08-CV-5666 (N.D. Ill., filed Oct. 6, 2008), press release available at <http://www.ftc.gov/opa/2008/10/herbalkings.shtm>.

²⁷ Australia Communications and Media Authority, “Penalties awarded in email spam case in the Federal Court” (Dec. 22, 2009), available at http://www.acma.gov.au/WEB/STANDARD/pc=PC_311998.

²⁸ *FTC v. Jesse Willms*, No. 2:11-CV-00828 (W.D. Wash., filed May 16, 2011). Complaint and other court papers available at <http://www.ftc.gov/os/caselist/1023012/index.shtm>. The settlement order with the Canadian defendant imposes a judgment of \$359 million, to be suspended upon Willms’ surrender of bank account funds and proceeds from the sale of his house, personal property, and corporate assets, including a Cadillac Escalade, fur coat, and artwork.

²⁹ See 15 U.S.C. § 46(j).

³⁰ Requests for investigative assistance pursuant to SAFE WEB must be made in writing, and the foreign agency must state that it has an investigation or enforcement proceeding involving possible violations of laws prohibiting (1) fraudulent or deceptive commercial practices or (2) other practices substantially similar to practices prohibited

testimony to a U.S. entity (often a third party, such as a domain registrar) and share the information with the foreign agency. Before the Act was passed, the FTC could not provide such assistance — even if the foreign agency was investigating a fraud, or helping the FTC to investigate a fraud, that victimized U.S. consumers.

An example of how this enforcement tool has helped U.S. consumers comes from an Edmonton (Canada) Police Service investigation of Hazim Gaber, a Canadian who peddled cancer cure scams mainly to U.S., Canadian, and U.K. citizens. Gaber claimed to sell an experimental cancer drug, but actually sent victims a useless white powder. Using the Act's investigative assistance provisions, the FTC obtained evidence from a U.S. domain registrar that helped tie Gaber to websites associated with the scam. Ultimately, the FBI arrested Gaber in Germany and extradited him to the U.S. In March 2010, Gaber pled guilty to five counts of wire fraud for selling counterfeit cancer drugs. He was sentenced to 33 months in prison and three years of supervised release.³¹

C. Cross-Border Jurisdictional Authority

The SAFE WEB Act also provides enhanced litigation tools. Key among them is the Act's confirmation of the FTC's cross-border jurisdictional authority. The Act amended the core jurisdictional provisions in Section 5 of the FTC Act to confirm the agency's authority to

by any provision of the laws administered by the Commission. 15 U.S.C. § 46(j)(1). The Act also requires that the Commission consider all relevant factors, including: (1) whether the agency has agreed to provide or will provide reciprocal assistance to the Commission; (2) whether the request would prejudice U.S. public interest; and (3) whether the foreign agency's investigation or proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons. *See* 15 U.S.C. § 46(j)(3). Finally, section 6(j)(1), (6)-(7) of the FTC Act, 15 U.S.C. § 46(j)(1), (6)-(7), also sets forth exceptions to the Commission's authority to render investigative assistance to foreign law enforcement agencies. The Act prohibits the Commission from providing investigative assistance if: (1) the foreign agency's investigation or enforcement proceeding involves the enforcement of antitrust laws; (2) the targets of the foreign agency's investigation or proceeding are banks, savings and loan institutions, federal credit unions, or common carriers; or (3) the agency is from a foreign state that the Secretary of State has determined repeatedly provides support for acts of international terrorism.

³¹ See Department of Justice Press Release, "Canadian Man Sentenced to 33 Months in Prison for Selling Counterfeit Cancer Drugs Using the Internet," available at <http://www.justice.gov/opa/pr/2010/August/10-crm-958.html>.

challenge both frauds from abroad that harm U.S. consumers and frauds involving material conduct in the United States, including those that victimize foreign consumers.³² The amendment also confirms the availability of monetary restitution to consumers as a remedy for domestic and foreign victims of FTC Act violations.³³

These provisions are crucial to the FTC’s ability to sue foreign defendants who harm U.S. consumers, helping the FTC to overcome arguments about the scope of its cross-border consumer protection jurisdiction. In *FTC v. Innovative Marketing, Inc.*,³⁴ for example, the FTC alleged that defendants used “scareware” to trick millions of consumers around the world into thinking malicious software had infected their computers, then sold them software to “fix” the non-existent problem. The foreign defendants argued that the FTC did not have jurisdiction over them, and thus could not seek return of their assets to the United States. The FTC invoked the SAFE WEB Act amendments in response: “Because the FTC is specifically empowered to redress foreign victims, the defendants’ argument that funds derived from defrauded foreign consumers are immune from repatriation must fail.”³⁵ The Court agreed, and the FTC eventually recovered \$8.2 million from one of the key defendants, who was based in Canada. The FTC has used this money to send out refund checks to more than 300,000 consumers for consumer redress.³⁶

The Act’s jurisdictional provisions are even more critical in light of the Supreme Court’s 2010 decision in *Morrison v. National Australia Bank Ltd.*³⁷ The Court there held that the SEC

³² 15 U.S.C. § 45(a)(4)(A)(i), (ii).

³³ 15 U.S.C. § 45(a)(4)(B).

³⁴ *FTC v. Innovative Mktg., Inc.*, No. RDB 08CV3233 (D. Md., filed Dec. 2, 2008), initial press release available at <http://www.ftc.gov/opa/2008/winsoftware.shtm>.

³⁵ Plaintiff’s Consolidated Reply to Sam Jain and Kristy Ross’s Opposition to the FTC’s Motion for an Order Holding Sam Jain and Kristy Ross in Contempt of Court and Requiring Repatriation of Their Assets in *FTC v. Innovative Mktg., Inc.*, No. RDB 08CV3233 (D. Md., filed Mar. 3, 2009) (internal citations omitted).

³⁶ See <http://www.ftc.gov/opa/2011/12/rebates.shtm>.

³⁷ 130 S. Ct. 2869 (2010).

Act did not have extraterritorial effect, and therefore could not apply to the sale of foreign securities outside the United States. Though the case involved only private parties, the *Morrison* decision also presented hurdles to the SEC’s ability to sue foreigners selling securities to U.S. citizens. Congress therefore promptly amended the law to provide that the SEC could bring cases involving transnational securities fraud.³⁸

The FTC Act, before the SAFE WEB amendments, contained jurisdictional language similar to that in the SEC Act. Though the ultimate effect of *Morrison* on the FTC’s jurisdiction is not clear, there is a risk that the federal courts would not permit the FTC to pursue foreigners victimizing U.S. consumers if the SAFE WEB Act were to sunset. Without the power to sue foreign wrongdoers, the FTC’s cross-border consumer protection enforcement would be crippled.

D. Enforcement Relationships

Finally, the Act strengthens the FTC’s enforcement relationships with foreign agencies. In particular, the Act authorizes the FTC “to retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission.”³⁹ With this tool, the FTC created an International Fellows Program so that foreign agency officials can work side-by-side with FTC staff on investigations and cases, subject to appropriate confidentiality

³⁸ 15 U.S.C § 77v(c). The SEC Act, as amended, now confers on federal district courts jurisdiction over actions involving: (1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States. These jurisdictional provisions do not contain a sunset provision or any other time limitation. See also *Study on the Cross-Border Scope of the Private Right of Action Under Section 10(b) of the Securities Exchange Act of 1934* by the Staff of the U.S. Securities and Exchange Commission at 6, available at <http://www.sec.gov/news/studies/2012/929y-study-cross-border-private-rights.pdf> (by this amendment “Congress restored the ability of the Securities and Exchange Commission (“Commission”) and the Department of Justice (“DOJ”) to bring enforcement actions under Section 10(b) in cases involving transnational securities fraud”).

³⁹ 15 U.S.C. § 57c-1.

restrictions and security measures.⁴⁰ This kind of arrangement is key to establishing trust and the understanding between agencies on basic functions crucial to developing meaningful case cooperation.

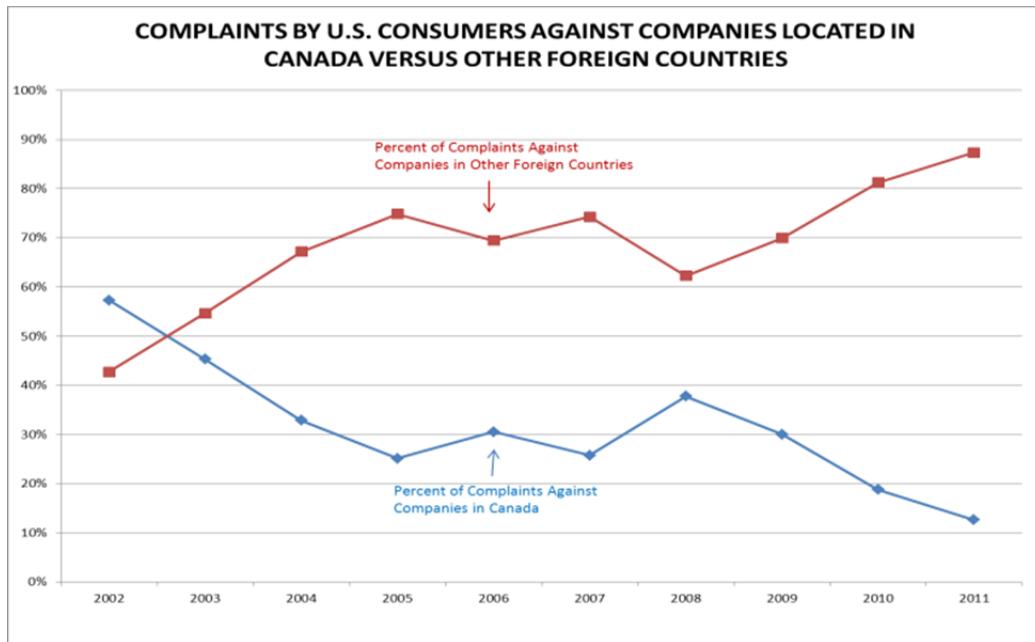
A standout example of this program was the work done by a Fellow from the FTC’s Canadian counterpart agency in connection with “Operation Tele-PHONEY,” described earlier. As part of this enforcement sweep against deceptive telemarketers, the Fellow played a key role, working at FTC offices on investigations and facilitating close coordination and reciprocal assistance between her agency and the FTC on several cases. The resulting sweep counted 180 civil and criminal actions by the FTC, the Canadian agency, and various other enforcement partners.⁴¹ Building these kinds of enforcement relationships is more important than ever, as the range of foreign countries involved in the agency’s work continues to grow.

IV. CROSS-BORDER CHALLENGES AND THE CONTINUING NEED FOR U.S. SAFE WEB ACT AUTHORITY

Despite the FTC’s successes in using the SAFE WEB Act, cross-border fraud remains a significant problem for U.S. consumers. Though overall percentages of cross-border complaints have remained steady in the past few years, U.S. consumers and the FTC are facing new and emerging cross-border challenges. For example, whereas much of the cross-border fraud in the 1990s involved telemarketing from Canada, newer threats to U.S. consumers are coming from all over the world. This general trend appears, for example, in the percentage of *Consumer Sentinel* cross-border complaints that involve companies in countries other than Canada:

⁴⁰ To date, the agency has hosted 48 international foreign officials, 13 of them working on some aspect of the consumer protection mission. The officials have come from Argentina, Austria, Australia, Brazil, Canada, China, Colombia, Egypt, the European Commission, France, Hungary, India, Israel, Kazakhstan, Mauritius, Mexico, Peru, Poland, Singapore, South Africa, South Korea, Switzerland, Tanzania, Turkey, United Kingdom, and Vietnam. Fellows have also made significant contributions to the FTC’s competition work, as this provision of the Act, unlike other sections, also covers the agency’s competition mission.

⁴¹ See <http://www.ftc.gov/opa/2008/05/telephoney.shtm> and <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02677.html>.



Several recent FTC cases illustrate this trend. In the past few months, the FTC filed cases involving “phantom” debt collection frauds, which appear to be based in India, targeting hundreds of thousands of financially vulnerable U.S. consumers to collect debts the consumers did not owe to the defendants or did not owe at all.⁴² One of these cases was recently featured on ABC News’ *Nightline*.⁴³ This is consistent with the 2011 complaint data in *Consumer Sentinel*, which shows India as the sixth most frequent location of companies complained about, after the United States, Canada, the United Kingdom, Nigeria, and Jamaica.⁴⁴ Another FTC case involved more than six million pre-recorded “robocalls” sent to U.S. consumers through facilities in the

⁴² See *FTC v. Broadway Global Master, Inc.*, No. 2:12-CV-00855 (E.D. Cal., filed Apr. 3, 2012), initial press release available at <http://www.ftc.gov/opa/2012/04/broadway.shtm>; *FTC v. American Credit Crunchers*, No. 12cv1028 (N.D. Ill., filed Feb. 13, 2012), initial press release available at <http://www.ftc.gov/opa/2012/02/acc.shtm>.

⁴³ Phantom Debt Collectors From India Harass Americans, Demand Money (June 7, 2012), available at <http://abcnews.go.com/Blotter/phantom-debt-collectors-india-harass-americans-demand-money/story?id=16512428>.

⁴⁴ Consumer Sentinel Network Data Book for January-December 2011, available at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2011.pdf>.

Philippines, by defendants with principals and employees in the Philippines and in Thailand.⁴⁵

Further complicating these challenges is the fact that not just wrongdoers, but also evidence and assets, can be located around the globe.

Reauthorization of the Act would enable the FTC to continue its current cross-border enforcement efforts and deal with new threats to U.S. consumers emanating from a growing number of jurisdictions. Like the SEC, CFTC, and CPSC, the FTC needs these enhanced enforcement tools to carry out its mission of protecting American consumers.

V. CONCLUSION

We urge Congress to promptly reauthorize the SAFE WEB Act, and we look forward to working with this Subcommittee on its proposed legislation.

⁴⁵ See *FTC v. Navestad*, No. 09-CV-6329 (W.D.N.Y., filed June 25, 2009), available at <http://www.ftc.gov/os/caselist/0923099/index.shtm>.