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

October 25, 2019

The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chair Schakowsky and Ranking Member McMorris Rodgers:

Thank you for holding the upcoming hearing currently scheduled for Tuesday, October 29, 2019, entitled, "Reauthorizing Brand USA and the U.S. SAFE WEB Act." As the five current members of the bipartisan Federal Trade Commission, we urge Congress to reauthorize for the second time, the U.S. SAFE WEB Act and respectfully request that this letter be entered into the record for the upcoming hearing.[1] The SAFE WEB Act provides the FTC with critical law enforcement tools to combat fraudulent telemarketing, robocalls, privacy violations, misleading health claims, spam, spyware, malware, and other cross-border misconduct that harms American consumers. These tools support cooperation with foreign counterparts and enforcement action against unlawful cross-border activity, so much so that they have become an indispensable part of the FTC's enforcement arsenal.[2] Congress extended the Act's original sunset in 2012; the Act now will sunset in 2020 absent further Congressional action. Expiration of the legislation would hobble the FTC's enforcement efforts to protect American consumers victimized by cross-border fraud and privacy violations.

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[1] Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers Beyond Borders Act (U.S. SAFE WEB Act), Pub. L. No. 109-455, 120 Stat. 3372, extended by Pub. L. No. 112-203, 126 Stat. 1484 (amending 15 U.S.C. §§ 41 *et seq.*).

[2] Testifying at the FTC's March 2019 international hearings on "The FTC's Role in a Changing World," senior foreign consumer protection, privacy, and criminal law enforcement officials, and senior U.S. agency officials and academics, singled out the U.S. SAFE WEB Act as a "key element" of the FTC's enforcement program. *See* Fed. Trade Comm'n, *Fed. Trade Comm'n Hearings on Competition and Consumer Protection in the 21st Century: The FTC's Role in a Changing World*, Hr'g Tr. at 28, 52, 90, 115, 130 (Mar. 25, 2019) [hereinafter *FTC Int'l Hr'g Tr.*], https://www.ftc.gov/system/files/documents/public_events/1454018/ftc_hearings_session_11_transcript_day_25-19.pdf. Former FTC Chairman and George Washington University Law School Professor William Kovacic said that the Act creates an "indispensable element of the infrastructure that supports international cooperation today" by allowing reciprocal assistance, bilateral information sharing, and international staff exchanges. FTC Int'l Hr'g Tr. at 28.

Congress passed the SAFE WEB Act in 2006, recognizing the threats facing U.S. consumers in the global marketplace. These challenges have multiplied as the digital economy becomes ever more complex and pervasive. The SAFE WEB Act provides enhanced enforcement tools in four major areas essential to effective cross-border enforcement and cooperation: (1) information sharing; (2) investigative assistance; (3) cross-border jurisdictional authority; and (4) enforcement relationships.[3] Every FTC Commissioner to address the matter—Republican, Democrat, and independent—has supported passage and reauthorization of the Act.[4]

Since the Act's passage, the FTC has relied on the Act's authority to respond to 156 SAFE WEB information-sharing requests from 38 enforcement agencies in 15 foreign countries. The FTC has also helped its foreign enforcement partners, both civil and criminal, to obtain U.S.-based evidence by issuing more than 135 civil investigative demands (investigative subpoenas) in 63 investigations, on behalf of 16 foreign agencies from eight countries. International issues have become increasingly common in FTC matters; the agency has conducted hundreds of investigations with international components, such as foreign targets, evidence, or assets, and has filed more than 100 cases involving cross-border components, since the Act's passage.[5]

As detailed in our 2012 testimony urging reauthorization of SAFE WEB, our cooperation and enforcement efforts relying upon SAFE WEB have been extremely effective.[6] Our SAFE WEB authority has improved the quantity and quality of evidence against common targets and

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[3] Congress gave the FTC enforcement tools similar to those given to the Securities and Exchange Commission and the Commodity Futures Trading Commission between 1988 and 1992.

[4] All five current Commissioners support reauthorization and have repeatedly testified in favor of the Act. *See, e.g.*, *Oversight of the Federal Trade Commission: Hearing Before the S. Comm. on Consumer Protection and Commerce of the H. Comm. on Energy and Commerce*, 115th Cong. 25-27 (May 8, 2019) (statement of Fed. Trade Comm'n), https://www.ftc.gov/system/files/documents/public_statements/1519212/p180101_house_ec_oversight_testimony_may_8_2019.pdf. Similarly, every Commissioner then serving supported the Act's renewal when the FTC last testified before the Committee in July 2012. *See* Fed. Trade Comm'n, *Prepared Statement of the Federal Trade Commission: 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* (July 12, 2012) [hereinafter *Prepared Statement*], https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-reauthorizing-u.s.safe-web-act-2006/120712safeweb.pdf. In 2011, all five Commissioners then serving wrote to the leadership of the FTC's authorizing House and Senate committees to urge renewal. *See* Fed. Trade Comm'n, *Commission Letter Requesting Repeal of the Sunset Provision of the U.S. SAFE WEB Act of 2006* (Oct. 3, 2011), https://www.ftc.gov/public-statements/2011/10/repeal-sunset-provision-us-safe-web-act-2006. In 2009, all four Commissioners then serving voted for the 2009 FTC report recommending reauthorization, https://www.ftc.gov/sites/default/files/documents/reports/u.s.safe-web-act-first-three-years-federal-trade-commission-report-congress/p035303safewebact2009.pdf. Similarly, all five Commissioners then serving unanimously recommended passage of what became the SAFE WEB Act in a 2005 report to Congress, https://www.ftc.gov/sites/default/files/documents/reports/us-safe-web-act-protecting-consumers-spam-spyware-and-fraud-legislative-recommendation-congress/ussafeweb.pdf.

[5] These cases include not only cross-border fraud, but also such actions as those addressing compliance with the EU-U.S. Privacy Shield framework, a program that allows the transfer of personal data from the EU to the U.S. in compliance with EU law.

[6] *See Prepared Statement*, *supra* note 4.

encouraged reciprocal assistance from other countries, especially Canada, which in 2010 passed legislation with mutual assistance provisions modeled on the SAFE WEB Act.[7]

Our SAFE WEB assistance to foreign law enforcement agencies has often led those agencies to bring actions against foreign-based fraudsters victimizing American consumers. For example, the FTC used its SAFE WEB authority to assist the Royal Canadian Mounted Police (RCMP) in its investigation of Banners Brokers, a massive online pyramid scheme based in Canada that targeted consumers in the U.S., Canada, and around the world. Ultimately, the Toronto Police (working with the RCMP) arrested two of Banners Brokers' three principals and charged them criminally for their participation in the $93 million scheme.[8]

When the FTC and its international partners focus on matters of common concern, SAFE WEB information sharing can prove mutually beneficial to cross-border enforcement efforts. The FTC's cross-border investigation of the global dating website AshleyMadison.com, which addressed a data breach affecting consumers in nearly 50 countries, provides a good example.[9] The FTC used its SAFE WEB powers to coordinate with Australian and Canadian counterparts, enabling them to contribute to the FTC's investigation. More recently, the FTC used its SAFE WEB powers in cooperating with the U.K. Information Commissioner's Office (ICO) to investigate Cambridge Analytica for using deceptive tactics to harvest personal information from tens of millions of Facebook users.[10] At recent FTC hearings, the ICO's Deputy Commissioner called the use of these information-sharing powers a "huge positive" in cross-border case cooperation.[11]

The SAFE WEB Act also confirms the agency's jurisdictional authority to challenge cross-border practices. In particular, the Act confirms the FTC's authority to challenge both frauds based abroad that harm U.S. consumers and frauds involving material conduct in the United States.[12] These provisions are crucial to address arguments about the scope of the FTC's cross-border consumer protection authority in investigations and litigation.

The FTC has used the Act's powers extensively in cross-border fraud cases and other matters. A notable example is Sanctuary Belize, a massive real estate investment scheme that duped

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[7] *See* Canada's Anti-Spam Legislation (CASL 2010 S.C., ch. 23 (Can.)), *available at* https://laws-lois.justice.gc.ca/eng/acts/E-1.6/index.html; Competition Act, Art. 29 (R.S.C., 1985, c. C-34), *available at* https://laws-lois.justice.gc.ca/eng/acts/c-34/page-1.html.

[8] *Canadians Arrested in US $93 Million Pyramid Scheme* (Dec. 9, 2015), https://www.ctvnews.ca/canada/canadians-arrested-in-us-93m-pyramid-scheme-1.2693136. In 2017, both men pled guilty to operating a pyramid scheme under the Competition Act.

[9] Fed. Trade Comm'n Press Release, *Operators of AshleyMadison.com Settle FTC, State Charges Resulting From 2015 Data Breach that Exposed 36 Million Users' Profile Information* (Dec. 14, 2016), https://www.ftc.gov/news-events/press-releases/2016/12/operators-ashleymadisoncom-settle-ftc-state-charges-resulting.

[10] Fed. Trade Comm'n Press Release, *FTC Sues Cambridge Analytica, Settles with Former CEO and App Developer* (July 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-sues-cambridge-analytica-settles-former-ceo-app-developer.

[11] *See FTC Int'l. Hrg. Tr.*, *supra* note 2, at 111.

[12] 15 U.S.C. § 45(a)(4)(A)(i)-(ii) (2012) (providing FTC authority over "acts or practices involving foreign commerce that—(i) cause or are likely to cause conduct reasonably foreseeable injury within the United States; or (ii) involve material conduct occurring within the United States").

Americans into purchasing property in remote southern Belize with false promises about the property's development.[13] In that case, the FTC used the SAFE WEB Act to successfully counter arguments asserted by one of the defendants—an offshore Belizean bank—that the FTC Act did not apply to its "foreign conduct."[14] The agency then obtained a $23 million settlement from the bank, representing approximately all of its U.S.-based assets.[15]

Another recent example involves the agency's case against two groups of defendants—Apex Capital Group and related U.K. entities, and a Latvian-based payment processor and its CEO. The FTC alleged that the Latvian defendants enabled the Apex defendants to lure consumers with "free trial" product offers online, and then charge them full price for the products and enroll them in negative option continuity plans without their consent.[16] The court rejected the Latvian defendants' argument that their conduct was outside the reach of the FTC, stating: "The FTC Act, as amended by the U.S. SAFE WEB Act, contains the requisite 'clear, affirmative indication' that Section 5's prohibition on 'unfair or deceptive acts or practices' extends to foreign-based conduct."[17] The court emphasized that "Congress passed the SAFE WEB Act in 2006 to enhance the FTC's ability to respond to cross-border frauds, such as the [alleged] Internet marketing scheme . . . ."[18] As a result of the partial settlement,[19] the FTC is likely to recover several million dollars, depending on the sale of certain assets, for the defrauded consumers.[20]

Despite the FTC's successes in using the SAFE WEB Act, cross-border fraud remains a significant problem for U.S. consumers. Between January 1, 2015 and October 16, 2019, the FTC's Consumer Sentinel complaint database received more than 255,000 complaints from U.S. consumers against foreign businesses all over the world, with leading locations including Canada, Nigeria, China, Jamaica, India, Mexico, and the United Kingdom. The total dollar loss

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[13] Fed. Trade Comm'n Press Release, *At FTC's Request, Court Halts Massive "Sanctuary Belize" Real Estate Investment Scam* (Nov. 8, 2018), https://www.ftc.gov/news-events/press-releases/2018/11/ftcs-request-court-halts-massive-sanctuary-belize-real-estate.

[14] *See* Fed. Trade Comm'n *Oppn. to Atlantic Int'l Bank Mot. to Dismiss* (1:18-cv-03309-PJM, D. Md. filed Jan. 22, 2019).

[15] Fed. Trade Comm'n Press Release, *Belizean Bank to Pay $23 Million and Cease Operations to Settle FTC Charges It Provided Substantial Assistance to the Sanctuary Belize Real Estate Scam* (Sept. 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/09/belizean-bank-pay-23-million-cease-operations-settle-ftc-charges.

[16] Fed. Trade Comm'n Press Release, *Court Temporarily Halts International Operation that Allegedly Deceived Consumers through False Claims of "Free Trial" Offers and Imposed Unauthorized Continuity Plans* (Nov. 18, 2018), https://www.ftc.gov/news-events/press-releases/2018/11/court-temporarily-halts-international-operation-allegedly; Fed. Trade Comm'n Press Release, *FTC Adds Latvian Financial Institution, CEO to Case against Apex Capital Group* (May 31, 2019), https://www.ftc.gov/news-events/press-releases/2019/05/ftc-adds-latvian-financial-institution-ceo-case-against-apex.

[17] *FTC v. Apex*, Case 2:18-cv-09573-JFW-JPR, slip op. at *13 (C.D. Ca. 2019) (order denying motions to dismiss issued Sept. 16, 2019).

[18] *Id.*

[19] Fed. Trade Comm'n Press Release, *Apex Capital Group Internet Marketers Settle FTC Allegations They Deceived Consumers With False Claims of "Free Trial" Offers and Unauthorized Continuity Plans* (Sept. 20, 2019), https://www.ftc.gov/news-events/press-releases/2019/09/apex-capital-group-internet-marketers-settle-ftc-allegations-they. The FTC's litigation against the Latvian payment processor and its CEO is ongoing.

[20] *Id.*

reported from these complaints alone exceeds $410 million.[21] These figures underscore the continuing need for the FTC's SAFE WEB Act authority and even greater international cooperation. To do this, the FTC must be able to assure its foreign counterparts that the tools provided by the SAFE WEB Act remain part of the FTC's law enforcement authority.

In the dozen years since the Act's passage, the SAFE WEB Act has proven indispensable to the FTC's cross-border enforcement efforts. By reauthorizing the Act now, Congress will ensure that the FTC can continue to work effectively with its foreign enforcement partners and develop new initiatives to combat cross-border fraud and protect U.S. consumers.

Sincerely,

Joseph J. Simons
Chairman

Noah Joshua Phillips
Commissioner

Rohit Chopra
Commissioner

Rebecca Kelly Slaughter
Commissioner

Christine S. Wilson
Commissioner

[21] Total injury is certainly larger, both because only a fraction of victims report and because consumers do not always know they are dealing with a foreign business.