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109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1608

[Report No. 109–219]

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. SMITH (for himself, Mr. MCCAIN, Mr. INOUE, and Mr. NELSON of Florida, Mr. DORGAN, Mr. BURNS, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 14, 2006

Reported by Mr. STEVENS, without amendment

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## A BILL

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Undertaking Spam, Spyware, And Fraud Enforcement

1 With Enforcers beyond Borders Act of 2005” or the “U.S.  
2 SAFE WEB Act of 2005”.

3 (b) FINDINGS.—The Congress finds the following:

4 (1) The Federal Trade Commission protects  
5 consumers from fraud and deception. Cross-border  
6 fraud and deception are growing international prob-  
7 lems that affect American consumers and busi-  
8 nesses.

9 (2) The development of the Internet and im-  
10 provements in telecommunications technologies have  
11 brought significant benefits to consumers. At the  
12 same time, they have also provided unprecedented  
13 opportunities for those engaged in fraud and decep-  
14 tion to establish operations in one country and vic-  
15 timize a large number of consumers in other coun-  
16 tries.

17 (3) An increasing number of consumer com-  
18 plaints collected in the Consumer Sentinel database  
19 maintained by the Commission, and an increasing  
20 number of cases brought by the Commission, involve  
21 foreign consumers, foreign businesses or individuals,  
22 or assets or evidence located outside the United  
23 States.

24 (4) The Commission has legal authority to rem-  
25 edy law violations involving domestic and foreign

1 wrongdoers, pursuant to the Federal Trade Commis-  
2 sion Act. The Commission's ability to obtain effec-  
3 tive relief using this authority, however, may face  
4 practical impediments when wrongdoers, victims,  
5 other witnesses, documents, money and third parties  
6 involved in the transaction are widely dispersed in  
7 many different jurisdictions. Such circumstances  
8 make it difficult for the Commission to gather all  
9 the information necessary to detect injurious prac-  
10 tices, to recover offshore assets for consumer re-  
11 dress, and to reach conduct occurring outside the  
12 United States that affects United States consumers.

13 (5) Improving the ability of the Commission  
14 and its foreign counterparts to share information  
15 about cross-border fraud and deception, to conduct  
16 joint and parallel investigations, and to assist each  
17 other is critical to achieve more timely and effective  
18 enforcement in cross-border cases.

19 (c) PURPOSE.—The purpose of this Act is to enhance  
20 the ability of the Federal Trade Commission to protect  
21 consumers from illegal spam, spyware, and cross-border  
22 fraud and deception and other consumer protection law  
23 violations.

1 **SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

2 Section 4 of the Federal Trade Commission Act (15  
3 U.S.C. 44) is amended by adding at the end the following:

4 “‘Foreign law enforcement agency’ means—

5 “(1) any agency or judicial authority of a for-  
6 eign government, including a foreign state, a polit-  
7 ical subdivision of a foreign state, or a multinational  
8 organization constituted by and comprised of foreign  
9 states, that is vested with law enforcement or inves-  
10 tigative authority in civil, criminal, or administrative  
11 matters; and

12 “(2) any multinational organization, to the ex-  
13 tent that it is acting on behalf of an entity described  
14 in paragraph (1).”.

15 **SEC. 3. AVAILABILITY OF REMEDIES.**

16 Section 5(a) of the Federal Trade Commission Act  
17 (15 U.S.C. 45(a)) is amended by adding at the end the  
18 following:

19 “(4)(A) For purposes of subsection (a), the  
20 term ‘unfair or deceptive acts or practices’ includes  
21 such acts or practices involving foreign commerce  
22 that—

23 “(i) cause or are likely to cause reasonably  
24 foreseeable injury within the United States; or

25 “(ii) involve material conduct occurring  
26 within the United States.

1           “(B) All remedies available to the Commission  
2           with respect to unfair and deceptive acts or practices  
3           shall be available for acts and practices described in  
4           this paragraph, including restitution to domestic or  
5           foreign victims.”.

6 **SEC. 4. POWERS OF THE COMMISSION.**

7           (a) PUBLICATION OF INFORMATION; REPORTS.—Sec-  
8           tion 6(f) of the Federal Trade Commission Act (15 U.S.C.  
9           46(f)) is amended—

10           (1) by inserting “(1)” after “such information”  
11           the first place it appears; and

12           (2) by striking “purposes.” and inserting “pur-  
13           poses, and (2) to any officer or employee of any for-  
14           eign law enforcement agency under the same cir-  
15           cumstances that making material available to foreign  
16           law enforcement agencies is permitted under section  
17           21(b).”.

18           (b) OTHER POWERS OF THE COMMISSION.—Section  
19           6 of the Federal Trade Commission Act (15 U.S.C. 46)  
20           is further amended by inserting after subsection (i) and  
21           before the proviso the following:

22           “(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW  
23           ENFORCEMENT AGENCIES.—

24           “(1) IN GENERAL.—Upon a written request  
25           from a foreign law enforcement agency to provide

1 assistance in accordance with this subsection, if the  
2 requesting agency states that it is investigating, or  
3 engaging in enforcement proceedings against, pos-  
4 sible violations of laws prohibiting fraudulent or de-  
5 ceptive commercial practices, or other practices sub-  
6 stantially similar to practices prohibited by any pro-  
7 vision of the laws administered by the Commission,  
8 other than Federal antitrust laws (as defined in sec-  
9 tion 12(5) of the International Antitrust Enforce-  
10 ment Assistance Act of 1994 (15 U.S.C. 6211(5))),  
11 to provide the assistance described in paragraph (2)  
12 without requiring that the conduct identified in the  
13 request constitute a violation of the laws of the  
14 United States.

15 “(2) TYPE OF ASSISTANCE.—In providing as-  
16 sistance to a foreign law enforcement agency under  
17 this subsection, the Commission may—

18 “(A) conduct such investigation as the  
19 Commission deems necessary to collect informa-  
20 tion and evidence pertinent to the request for  
21 assistance, using all investigative powers au-  
22 thorized by this Act; and

23 “(B) when the request is from an agency  
24 acting to investigate or pursue the enforcement  
25 of civil laws, or when the Attorney General re-

1           fers a request to the Commission from an agen-  
2           cy acting to investigate or pursue the enforce-  
3           ment of criminal laws, seek and accept appoint-  
4           ment by a United States district court of Com-  
5           mission attorneys to provide assistance to for-  
6           eign and international tribunals and to litigants  
7           before such tribunals on behalf of a foreign law  
8           enforcement agency pursuant to section 1782 of  
9           title 28, United States Code.

10           “(3) CRITERIA FOR DETERMINATION.—In de-  
11           ciding whether to provide such assistance, the Com-  
12           mission shall consider all relevant factors, includ-  
13           ing—

14                   “(A) whether the requesting agency has  
15                   agreed to provide or will provide reciprocal as-  
16                   sistance to the Commission;

17                   “(B) whether compliance with the request  
18                   would prejudice the public interest of the  
19                   United States; and

20                   “(C) whether the requesting agency’s in-  
21                   vestigation or enforcement proceeding concerns  
22                   acts or practices that cause or are likely to  
23                   cause injury to a significant number of persons.

24           “(4) INTERNATIONAL AGREEMENTS.—If a for-  
25           eign law enforcement agency has set forth a legal

1 basis for requiring execution of an international  
2 agreement as a condition for reciprocal assistance,  
3 or as a condition for provision of materials or infor-  
4 mation to the Commission, the Commission, with  
5 prior approval and ongoing oversight of the Sec-  
6 retary of State, and with final approval of the agree-  
7 ment by the Secretary of State, may negotiate and  
8 conclude an international agreement, in the name of  
9 either the United States or the Commission, for the  
10 purpose of obtaining such assistance, materials, or  
11 information. The Commission may undertake in  
12 such an international agreement to—

13 “(A) provide assistance using the powers  
14 set forth in this subsection;

15 “(B) disclose materials and information in  
16 accordance with subsection (f) and section  
17 21(b); and

18 “(C) engage in further cooperation, and  
19 protect materials and information received from  
20 disclosure, as authorized by this Act.

21 “(5) ADDITIONAL AUTHORITY.—The authority  
22 provided by this subsection is in addition to, and not  
23 in lieu of, any other authority vested in the Commis-  
24 sion or any other officer of the United States.



1           “(6) LIMITATION.—The authority granted by  
2 this subsection shall not authorize the Commission  
3 to take any action or exercise any power with re-  
4 spect to a bank, a savings and loan institution de-  
5 scribed in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a  
6 Federal credit union described in section 18(f)(4)  
7 (15 U.S.C. 57a(f)(4)), or a common carrier subject  
8 to the Act to regulate commerce, except in accord-  
9 ance with the undesignated proviso following the last  
10 designated subsection of section 6 (15 U.S.C. 46).

11           “(7) ASSISTANCE TO CERTAIN COUNTRIES.—  
12 The Commission may not provide investigative as-  
13 sistance under this subsection to a foreign law en-  
14 forcement agency from a foreign state that the Sec-  
15 retary of State has determined, in accordance with  
16 section 6(j) of the Export Administration Act of  
17 1979 (50 U.S.C. App. 2405(j)), has repeatedly pro-  
18 vided support for acts of international terrorism, un-  
19 less and until such determination is rescinded pursu-  
20 ant to section 6(j)(4) of that Act (50 U.S.C. App.  
21 2405(j)(4)).

22           “(k) REFERRAL OF EVIDENCE FOR CRIMINAL PRO-  
23 CEEDINGS.—

24           “(1) IN GENERAL.—Whenever the Commission  
25 obtains evidence that any person, partnership, or

1 corporation, either domestic or foreign, has engaged  
2 in conduct that may constitute a violation of Federal  
3 criminal law, to transmit such evidence to the Attor-  
4 ney General, who may institute criminal proceedings  
5 under appropriate statutes. Nothing in this para-  
6 graph affects any other authority of the Commission  
7 to disclose information.

8 “(2) INTERNATIONAL INFORMATION.—The  
9 Commission shall endeavor to ensure, with respect to  
10 memoranda of understanding and international  
11 agreements it may conclude, that material it has ob-  
12 tained from foreign law enforcement agencies acting  
13 to investigate or pursue the enforcement of foreign  
14 criminal laws may be used for the purpose of inves-  
15 tigation, prosecution, or prevention of violations of  
16 United States criminal laws.

17 “(1) EXPENDITURES FOR COOPERATIVE ARRANGE-  
18 MENTS.—To expend appropriated funds for—

19 “(1) operating expenses and other costs of bi-  
20 lateral and multilateral cooperative law enforcement  
21 groups conducting activities of interest to the Com-  
22 mission and in which the Commission participates;  
23 and

24 “(2) expenses for consultations and meetings  
25 hosted by the Commission with foreign government

1 agency officials, members of their delegations, ap-  
2 propriate representatives and staff to exchange views  
3 concerning developments relating to the Commis-  
4 sion's mission, development and implementation of  
5 cooperation agreements, and provision of technical  
6 assistance for the development of foreign consumer  
7 protection or competition regimes, such expenses to  
8 include necessary administrative and logistic ex-  
9 penses and the expenses of Commission staff and  
10 foreign invitees in attendance at such consultations  
11 and meetings including—

12 “(A) such incidental expenses as meals  
13 taken in the course of such attendance;

14 “(B) any travel and transportation to or  
15 from such meetings; and

16 “(C) any other related lodging or subsist-  
17 ence.”.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—The  
19 Federal Trade Commission is authorized to expend appro-  
20 priated funds not to exceed \$100,000 per fiscal year for  
21 purposes of section 6(l) of the Federal Trade Commission  
22 Act (15 U.S.C. 46(l)) (as added by subsection (b) of this  
23 section), including operating expenses and other costs of  
24 the following bilateral and multilateral cooperative law en-  
25 forcement agencies and organizations:

1           (1) The International Consumer Protection and  
2           Enforcement Network.

3           (2) The International Competition Network.

4           (3) The Mexico-U.S.-Canada Health Fraud  
5           Task Force.

6           (4) Project Emptor.

7           (5) The Toronto Strategic Partnership and  
8           other regional partnerships with a nexus in a Cana-  
9           dian province.

10          (d) CONFORMING AMENDMENT.—Section 6 of the  
11 Federal Trade Commission Act (15 U.S.C. 46) is amended  
12 by striking “clauses (a) and (b)” in the proviso following  
13 subsection (l) (as added by subsection (b) of this section)  
14 and inserting “subsections (a), (b), and (j)”.

15 **SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.**

16          Section 16 of the Federal Trade Commission Act (15  
17 U.S.C. 56) is amended by adding at the end the following:

18          “(c) FOREIGN LITIGATION.—

19                 “(1) COMMISSION ATTORNEYS.—With the con-  
20                 currence of the Attorney General, the Commission  
21                 may designate Commission attorneys to assist the  
22                 Attorney General in connection with litigation in for-  
23                 eign courts on particular matters in which the Com-  
24                 mission has an interest.

1           “(2) REIMBURSEMENT FOR FOREIGN COUN-  
2           SEL.—The Commission is authorized to expend ap-  
3           propriated funds, upon agreement with the Attorney  
4           General, to reimburse the Attorney General for the  
5           retention of foreign counsel for litigation in foreign  
6           courts and for expenses related to litigation in for-  
7           eign courts in which the Commission has an interest.

8           “(3) LIMITATION ON USE OF FUNDS.—Nothing  
9           in this subsection authorizes the payment of claims  
10          or judgments from any source other than the perma-  
11          nent and indefinite appropriation authorized by sec-  
12          tion 1304 of title 31, United States Code.

13          “(4) OTHER AUTHORITY.—The authority pro-  
14          vided by this subsection is in addition to any other  
15          authority of the Commission or the Attorney Gen-  
16          eral.”.

17 **SEC. 6. SHARING INFORMATION WITH FOREIGN LAW EN-**  
18 **FORCEMENT AGENCIES.**

19          (a) MATERIAL OBTAINED PURSUANT TO COMPUL-  
20          SORY PROCESS.—Section 21(b)(6) of the Federal Trade  
21          Commission Act (15 U.S.C. 57b–2(b)(6)) is amended by  
22          adding at the end “The custodian may make such material  
23          available to any foreign law enforcement agency upon the  
24          prior certification of an appropriate official of any such  
25          foreign law enforcement agency, either by a prior agree-

1 ment or memorandum of understanding with the Commis-  
2 sion or by other written certification, that such material  
3 will be maintained in confidence and will be used only for  
4 official law enforcement purposes, if—

5           “(A) the foreign law enforcement agency has  
6 set forth a bona fide legal basis for its authority to  
7 maintain the material in confidence;

8           “(B) the materials are to be used for purposes  
9 of investigating, or engaging in enforcement pro-  
10 ceedings related to, possible violations of—

11           “(i) foreign laws prohibiting fraudulent or  
12 deceptive commercial practices, or other prac-  
13 tices substantially similar to practices prohib-  
14 ited by any law administered by the Commis-  
15 sion;

16           “(ii) a law administered by the Commis-  
17 sion, if disclosure of the material would further  
18 a Commission investigation or enforcement pro-  
19 ceeding; or

20           “(iii) with the approval of the Attorney  
21 General, other foreign criminal laws, if such  
22 foreign criminal laws are offenses defined in or  
23 covered by a criminal mutual legal assistance  
24 treaty in force between the government of the

1 United States and the foreign law enforcement  
2 agency's government;

3 “(C) the appropriate Federal banking agency  
4 (as defined in section 3(q) of the Federal Deposit  
5 Insurance Act (12 U.S.C. 1813(q)) or, in the case  
6 of a Federal credit union, the National Credit Union  
7 Administration, has given its prior approval if the  
8 materials to be provided under subparagraph (B)  
9 are requested by the foreign law enforcement agency  
10 for the purpose of investigating, or engaging in en-  
11 forcement proceedings based on, possible violations  
12 of law by a bank, a savings and loan institution de-  
13 scribed in section 18(f)(3) of the Federal Trade  
14 Commission Act (15 U.S.C. 57a(f)(3)), or a Federal  
15 credit union described in section 18(f)(4) of the Fed-  
16 eral Trade Commission Act (15 U.S.C. 57a(f)(4));  
17 and

18 “(D) the foreign law enforcement agency is not  
19 from a foreign state that the Secretary of State has  
20 determined, in accordance with section 6(j) of the  
21 Export Administration Act of 1979 (50 U.S.C. App.  
22 2405(j)), has repeatedly provided support for acts of  
23 international terrorism, unless and until such deter-  
24 mination is rescinded pursuant to section 6(j)(4) of  
25 that Act (50 U.S.C. App. 2405(j)(4)).

1 Nothing in the preceding sentence authorizes the disclo-  
2 sure of material obtained in connection with the adminis-  
3 tration of the Federal antitrust laws or foreign antitrust  
4 laws (as defined in paragraphs (5) and (7), respectively,  
5 of section 12 of the International Antitrust Enforcement  
6 Assistance Act of 1994 (15 U.S.C. 6211)) to any officer  
7 or employee of a foreign law enforcement agency.”.

8 (b) INFORMATION SUPPLIED BY AND ABOUT FOR-  
9 EIGN SOURCES.—Section 21(f) of the Federal Trade Com-  
10 mission Act (15 U.S.C. 57b–2(f)) is amended to read as  
11 follows:

12 “(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

13 “(1) IN GENERAL.—Any material which is re-  
14 ceived by the Commission in any investigation, a  
15 purpose of which is to determine whether any person  
16 may have violated any provision of the laws adminis-  
17 tered by the Commission, and which is provided pur-  
18 suant to any compulsory process under this Act or  
19 which is provided voluntarily in place of such com-  
20 pulsory process shall not be required to be disclosed  
21 under section 552 of title 5, United States Code, or  
22 any other provision of law, except as provided in  
23 paragraph (2)(B) of this section.

24 “(2) MATERIAL OBTAINED FROM A FOREIGN  
25 SOURCE.—



1           “(A) IN GENERAL.—Except as provided in  
2 subparagraph (B) of this paragraph, the Com-  
3 mission shall not be required to disclose under  
4 section 552 of title 5, United States Code, or  
5 any other provision of law—

6           “(i) any material obtained from a for-  
7 eign law enforcement agency or other for-  
8 eign government agency, if the foreign law  
9 enforcement agency or other foreign gov-  
10 ernment agency has requested confidential  
11 treatment, or has precluded such disclosure  
12 under other use limitations, as a condition  
13 of providing the material;

14           “(ii) any material reflecting a con-  
15 sumer complaint obtained from any other  
16 foreign source, if that foreign source sup-  
17 plying the material has requested confiden-  
18 tial treatment as a condition of providing  
19 the material; or

20           “(iii) any material reflecting a con-  
21 sumer complaint submitted to a Commis-  
22 sion reporting mechanism sponsored in  
23 part by foreign law enforcement agencies  
24 or other foreign government agencies.

1           “(B) SAVINGS PROVISION.—Nothing in  
2           this subsection shall authorize the Commission  
3           to withhold information from the Congress or  
4           prevent the Commission from complying with  
5           an order of a court of the United States in an  
6           action commenced by the United States or the  
7           Commission.”.

8 **SEC. 7. CONFIDENTIALITY; DELAYED NOTICE OF PROCESS.**

9           (a) IN GENERAL.—The Federal Trade Commission  
10          Act (15 U.S.C. 41 et seq.) is amended by inserting after  
11          section 21 the following:

12 **“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**  
13                                   **COMPULSORY PROCESS FOR CERTAIN THIRD**  
14                                   **PARTIES.**

15          “(a) APPLICATION WITH OTHER LAWS.—The Right  
16          to Financial Privacy Act (12 U.S.C. 3401 et seq.) and  
17          chapter 121 of title 18, United States Code, shall apply  
18          with respect to the Commission, except as otherwise pro-  
19          vided in this section.

20          “(b) PROCEDURES FOR DELAY OF NOTIFICATION OR  
21          PROHIBITION OF DISCLOSURE.—The procedures for delay  
22          of notification or prohibition of disclosure under the Right  
23          to Financial Privacy Act (12 U.S.C. 3401 et seq.) and  
24          chapter 121 of title 18, United States Code, including pro-  
25          cedures for extensions of such delays or prohibitions, shall

1 be available to the Commission, provided that, notwith-  
2 standing any provision therein—

3           “(1) a court may issue an order delaying notifi-  
4 cation or prohibiting disclosure (including extending  
5 such an order) in accordance with the procedures of  
6 section 1109 of the Right to Financial Privacy Act  
7 (12 U.S.C. 3409) (if notification would otherwise be  
8 required under that Act), or section 2705 of title 18,  
9 United States Code, (if notification would otherwise  
10 be required under chapter 121 of that title), if the  
11 presiding judge or magistrate judge finds that there  
12 is reason to believe that such notification or disclo-  
13 sure may cause an adverse result as defined in sub-  
14 section (g) of this section; and

15           “(2) if notification would otherwise be required  
16 under chapter 121 of title 18, United States Code,  
17 the Commission may delay notification (including ex-  
18 tending such a delay) upon the execution of a writ-  
19 ten certification in accordance with the procedures  
20 of section 2705 of that title if the Commission finds  
21 that there is reason to believe that notification may  
22 cause an adverse result as defined in subsection (g)  
23 of this section.

24           “(c) EX PARTE APPLICATION BY COMMISSION.—

1           “(1) IN GENERAL.—If neither notification nor  
2           delayed notification by the Commission is required  
3           under the Right to Financial Privacy Act (12 U.S.C.  
4           3401 et seq.) or chapter 121 of title 18, United  
5           States Code, the Commission may apply ex parte to  
6           a presiding judge or magistrate judge for an order  
7           prohibiting the recipient of compulsory process  
8           issued by the Commission from disclosing to any  
9           other person the existence of the process, notwith-  
10          standing any law or regulation of the United States,  
11          or under the constitution, or any law or regulation,  
12          of any State, political subdivision of a State, terri-  
13          tory of the United States, or the District of Colum-  
14          bia. The presiding judge or magistrate judge may  
15          enter such an order granting the requested prohibi-  
16          tion of disclosure for a period not to exceed 60 days  
17          if there is reason to believe that disclosure may  
18          cause an adverse result as defined in subsection (g).  
19          The presiding judge or magistrate judge may grant  
20          extensions of this order of up to 30 days each in ac-  
21          cordance with this subsection, except that in no  
22          event shall the prohibition continue in force for more  
23          than a total of 9 months.

24           “(2) APPLICATION.—This subsection shall  
25          apply only in connection with compulsory process

1 issued by the Commission where the recipient of  
2 such process is not a subject of the investigation or  
3 proceeding at the time such process is issued.

4 “(3) LIMITATION.—No order issued under this  
5 subsection shall prohibit any recipient from dis-  
6 closing to a Federal agency that the recipient has re-  
7 ceived compulsory process from the Commission.

8 “(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If  
9 neither notification nor delayed notification by the Com-  
10 mission is required under the Right to Financial Privacy  
11 Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18,  
12 United States Code, the recipient of compulsory process  
13 issued by the Commission under this Act shall not be lia-  
14 ble under any law or regulation of the United States, or  
15 under the constitution, or any law or regulation, of any  
16 State, political subdivision of a State, territory of the  
17 United States, or the District of Columbia, or under any  
18 contract or other legally enforceable agreement, for failure  
19 to provide notice to any person that such process has been  
20 issued or that the recipient has provided information in  
21 response to such process. The preceding sentence does not  
22 exempt any recipient from liability for—

23 “(1) the underlying conduct reported;

24 “(2) a failure to comply with the record reten-  
25 tion requirements under section 1104(c) of the

1 Right to Financial Privacy Act (12 U.S.C. 3404),  
2 where applicable; or

3 “(3) any failure to comply with any obligation  
4 the recipient may have to disclose to a Federal agen-  
5 cy that the recipient has received compulsory process  
6 from the Commission or intends to provide or has  
7 provided information to the Commission in response  
8 to such process.

9 “(e) VENUE AND PROCEDURE.—

10 “(1) IN GENERAL.—All judicial proceedings ini-  
11 tiated by the Commission under the Right to Finan-  
12 cial Privacy Act (12 U.S.C. 3401 et seq.), chapter  
13 121 of title 18, United States Code, or this section  
14 may be brought in the United States District Court  
15 for the District of Columbia or any other appro-  
16 priate United States District Court. All ex parte ap-  
17 plications by the Commission under this section re-  
18 lated to a single investigation may be brought in a  
19 single proceeding.

20 “(2) IN CAMERA PROCEEDINGS.—Upon applica-  
21 tion by the Commission, all judicial proceedings pur-  
22 suant to this section shall be held in camera and the  
23 records thereof sealed until expiration of the period  
24 of delay or such other date as the presiding judge  
25 or magistrate judge may permit.

1       “(f) SECTION NOT TO APPLY TO ANTITRUST INVES-  
2 TIGATIONS OR PROCEEDINGS.—This section shall not  
3 apply to an investigation or proceeding related to the ad-  
4 ministration of Federal antitrust laws or foreign antitrust  
5 laws (as defined in paragraphs (5) and (7), respectively,  
6 of section 12 of the International Antitrust Enforcement  
7 Assistance Act of 1994 (15 U.S.C. 6211).

8       “(g) ADVERSE RESULT DEFINED.—For purposes of  
9 this section the term ‘adverse result’ means—

10           “(1) endangering the life or physical safety of  
11       an individual;

12           “(2) flight from prosecution;

13           “(3) the destruction of, or tampering with, evi-  
14       dence;

15           “(4) the intimidation of potential witnesses; or

16           “(5) otherwise seriously jeopardizing an inves-  
17       tigation or proceeding related to fraudulent or de-  
18       ceptive commercial practices or persons involved in  
19       such practices, or unduly delaying a trial related to  
20       such practices or persons involved in such practices,  
21       including, but not limited to, by—

22           “(A) the transfer outside the territorial  
23       limits of the United States of assets or records  
24       related to fraudulent or deceptive commercial

1 practices or related to persons involved in such  
2 practices;

3 “(B) impeding the ability of the Commis-  
4 sion to identify persons involved in fraudulent  
5 or deceptive commercial practices, or to trace  
6 the source or disposition of funds related to  
7 such practices; or

8 “(C) the dissipation, fraudulent transfer,  
9 or concealment of assets subject to recovery by  
10 the Commission.”.

11 (b) CONFORMING AMENDMENT.—Section 16(a)(2) of  
12 the Federal Trade Commission Act (15 U.S.C. 56(a)(2))  
13 is amended—

14 (1) in subparagraph (C) by striking “or” after  
15 the semicolon;

16 (2) in subparagraph (D) by inserting “or” after  
17 the semicolon; and

18 (3) by inserting after subparagraph (D) the fol-  
19 lowing:

20 “(E) under section 21A of this Act;”.

21 **SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF IN-**  
22 **FORMATION.**

23 The Federal Trade Commission Act (15 U.S.C. 41  
24 et seq.) is further amended by adding after section 21A  
25 (as added by section 7 of this Act) the following:



1 **“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF**  
2 **INFORMATION.**

3 “(a) IN GENERAL.—

4 “(1) NO LIABILITY FOR PROVIDING CERTAIN  
5 MATERIAL.—An entity described in paragraphs (2)  
6 or (3) of subsection (d) that voluntarily provides ma-  
7 terial to the Commission that such entity reasonably  
8 believes is relevant to—

9 “(A) a possible unfair or deceptive act or  
10 practice, as defined in section 5(a) of this Act;  
11 or

12 “(B) assets subject to recovery by the  
13 Commission, including assets located in foreign  
14 jurisdictions;

15 shall not be liable to any person under any law or  
16 regulation of the United States, or under the con-  
17 stitution, or any law or regulation, of any State, po-  
18 litical subdivision of a State, territory of the United  
19 States, or the District of Columbia, for such provi-  
20 sion of material or for any failure to provide notice  
21 of such provision of material or of intention to so  
22 provide material.

23 “(2) LIMITATIONS.—Nothing in this subsection  
24 shall be construed to exempt any such entity from  
25 liability—

1           “(A) for the underlying conduct reported;

2           or

3           “(B) to any Federal agency for providing  
4           such material or for any failure to comply with  
5           any obligation the entity may have to notify a  
6           Federal agency prior to providing such material  
7           to the Commission.

8           “(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity  
9           described in paragraph (1) of subsection (d) shall, in ac-  
10          cordance with section 5318(g)(3) of title 31, United States  
11          Code, be exempt from liability for making a voluntary dis-  
12          closure to the Commission of any possible violation of law  
13          or regulation, including—

14                 “(1) a disclosure regarding assets, including as-  
15                 sets located in foreign jurisdictions—

16                         “(A) related to possibly fraudulent or de-  
17                         ceptive commercial practices;

18                         “(B) related to persons involved in such  
19                         practices; or

20                         “(C) otherwise subject to recovery by the  
21                         Commission; or

22                 “(2) a disclosure regarding suspicious  
23                 chargeback rates related to possibly fraudulent or  
24                 deceptive commercial practices.

1           “(c) CONSUMER COMPLAINTS.—Any entity described  
2 in subsection (d) that voluntarily provides consumer com-  
3 plaints sent to it, or information contained therein, to the  
4 Commission shall not be liable to any person under any  
5 law or regulation of the United States, or under the con-  
6 stitution, or any law or regulation, of any State, political  
7 subdivision of a State, territory of the United States, or  
8 the District of Columbia, for such provision of material  
9 or for any failure to provide notice of such provision of  
10 material or of intention to so provide material. This sub-  
11 section shall not provide any exemption from liability for  
12 the underlying conduct.

13           “(d) APPLICATION.—This section applies to the fol-  
14 lowing entities, whether foreign or domestic:

15                   “(1) A financial institution as defined in section  
16                   5312 of title 31, United States Code.

17                   “(2) To the extent not included in paragraph  
18                   (1), a bank or thrift institution, a commercial bank  
19                   or trust company, an investment company, a credit  
20                   card issuer, an operator of a credit card system, and  
21                   an issuer, redeemer, or cashier of travelers’ checks,  
22                   money orders, or similar instruments.

23                   “(3) A courier service, a commercial mail re-  
24                   ceiving agency, an industry membership organiza-  
25                   tion, a payment system provider, a consumer report-

1       ing agency, a domain name registrar or registry act-  
 2       ing as such, and a provider of alternative dispute  
 3       resolution services.

4               “(4) An Internet service provider or provider of  
 5       telephone services.”.

6       **SEC. 9. STAFF EXCHANGES.**

7       The Federal Trade Commission Act (15 U.S.C. 41  
 8       et seq.) is amended by adding after section 25 the fol-  
 9       lowing new section:

10      **“SEC. 25A. STAFF EXCHANGES.**

11       “(a) IN GENERAL.—The Commission may—

12               “(1) retain or employ officers or employees of  
 13       foreign government agencies on a temporary basis as  
 14       employees of the Commission pursuant to section 2  
 15       of this Act or section 3101 or section 3109 of title  
 16       5, United States Code; and

17               “(2) detail officers or employees of the Commis-  
 18       sion to work on a temporary basis for appropriate  
 19       foreign government agencies.

20       “(b) RECIPROCITY AND REIMBURSEMENT.—The  
 21       staff arrangements described in subsection (a) need not  
 22       be reciprocal. The Commission may accept payment or re-  
 23       imbursement, in cash or in kind, from a foreign govern-  
 24       ment agency to which this section is applicable, or pay-  
 25       ment or reimbursement made on behalf of such agency,

1 for expenses incurred by the Commission, its members,  
2 and employees in carrying out such arrangements.

3 “(c) STANDARDS OF CONDUCT.—A person appointed  
4 under subsection (a)(1) shall be subject to the provisions  
5 of law relating to ethics, conflicts of interest, corruption,  
6 and any other criminal or civil statute or regulation gov-  
7 erning the standards of conduct for Federal employees  
8 that are applicable to the type of appointment.”.

9 **SEC. 10. INFORMATION SHARING WITH FINANCIAL REGU-**  
10 **LATORS.**

11 Section 1112(e) of the Right to Financial Privacy Act  
12 of 1978 (12 U.S.C. 3412(e)) is amended by inserting “the  
13 Federal Trade Commission,” after “the Securities and Ex-  
14 change Commission,”.

15 **SEC. 11. AUTHORITY TO ACCEPT REIMBURSEMENTS, GIFTS,**  
16 **AND VOLUNTARY AND UNCOMPENSATED**  
17 **SERVICES.**

18 The Federal Trade Commission Act (15 U.S.C. 41  
19 et seq.) is amended—

20 (1) by redesignating section 26 as section 28;

21 and

22 (2) by inserting after section 25A, as added by  
23 section 9 of this Act, the following:

1 **“SEC. 26. REIMBURSEMENT OF EXPENSES.**

2       “The Commission may accept payment or reimburse-  
3 ment, in cash or in kind, from a domestic or foreign law  
4 enforcement agency, or payment or reimbursement made  
5 on behalf of such agency, for expenses incurred by the  
6 Commission, its members, or employees in carrying out  
7 any activity pursuant to a statute administered by the  
8 Commission without regard to any other provision of law.  
9 Any such payments or reimbursements shall be considered  
10 a reimbursement to the appropriated funds of the Com-  
11 mission.

12 **“SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED**  
13 **SERVICES.**

14       “(a) IN GENERAL.—In furtherance of its functions  
15 the Commission may accept, hold, administer, and use un-  
16 conditional gifts, donations, and bequests of real, personal,  
17 and other property and, notwithstanding section 1342 of  
18 10 title 31, United States Code, accept voluntary and un-  
19 compensated services.

20       “(b) LIMITATIONS.—

21               “(1) CONFLICTS OF INTEREST.—The Commis-  
22 sion shall establish written guidelines setting forth  
23 criteria to be used in determining whether the ac-  
24 ceptance, holding, administration, or use of a gift,  
25 donation, or bequest pursuant to subsection (a)  
26 would reflect unfavorably upon the ability of the

1 Commission or any employee to carry out its respon-  
2 sibilities or official duties in a fair and objective  
3 manner, or would compromise the integrity or the  
4 appearance of the integrity of its programs or any  
5 official involved in those programs.

6 “(2) VOLUNTARY SERVICES.—A person who  
7 provides voluntary and uncompensated service under  
8 subsection (a) shall be considered a Federal em-  
9 ployee for purposes of—

10 “(A) chapter 81 of title 5, United States  
11 Code, (relating to compensation for injury); and

12 “(B) the provisions of law relating to eth-  
13 ics, conflicts of interest, corruption, and any  
14 other criminal or civil statute or regulation gov-  
15 erning the standards of conduct for Federal  
16 employees.

17 “(3) TORT LIABILITY OF VOLUNTEERS.—A per-  
18 son who provides voluntary and uncompensated serv-  
19 ice under subsection (a), while assigned to duty,  
20 shall be deemed a volunteer of a nonprofit organiza-  
21 tion or governmental entity for purposes of the Vol-  
22 unteer Protection Act of 1997 (42 U.S.C. 14501 et  
23 seq.). Subsection (d) of section 4 of such Act (42  
24 U.S.C. 14503(d)) shall not apply for purposes of any  
25 claim against such volunteer.”.

1 **SEC. 12. PRESERVATION OF EXISTING AUTHORITY.**

2 The authority provided by this Act, and by the Fed-  
3 eral Trade Commission Act (15 U.S.C. 41 et seq.) and  
4 the Right to Financial Privacy Act (12 U.S.C. 3401 et  
5 seq.), as such Acts are amended by this Act, is in addition  
6 to, and not in lieu of, any other authority vested in the  
7 Federal Trade Commission or any other officer of the  
8 United States.

9 **SEC. 13. REPORT.**

10 Not later than 3 years after the date of enactment  
11 of this Act, the Federal Trade Commission shall transmit  
12 to Congress a report describing its use of and experience  
13 with the authority granted by this Act, along with any rec-  
14 ommendations for additional legislation. The report shall  
15 include—

16 (1) the number of cross-border complaints re-  
17 ceived by the Commission;

18 (2) identification of the foreign agencies to  
19 which the Commission has provided nonpublic inves-  
20 tigative information under this Act;

21 (3) the number of times the Commission has  
22 used compulsory process on behalf of foreign law en-  
23 forcement agencies pursuant to section 6 of the Fed-  
24 eral Trade Commission Act (15 U.S.C. 46), as  
25 amended by section 4 of this Act;



1           (4) a list of international agreements and  
2 memoranda of understanding executed by the Com-  
3 mission that relate to this Act;

4           (5) the number of times the Commission has  
5 sought delay of notice pursuant to section 21A of  
6 the Federal Trade Commission Act, as added by sec-  
7 tion 7 of this Act, and the number of times a court  
8 has granted a delay;

9           (6) a description of the types of information  
10 private entities have provided voluntarily pursuant to  
11 section 21B of the Federal Trade Commission Act,  
12 as added by section 8 of this Act;

13           (7) a description of the results of cooperation  
14 with foreign law enforcement agencies under section  
15 21 of the Federal Trade Commission Act (15 U.S.C.  
16 57–2) as amended by section 6 of this Act;

17           (8) an analysis of whether the lack of an ex-  
18 emption from the disclosure requirements of section  
19 552 of title 5, United States Code, with regard to  
20 information or material voluntarily provided relevant  
21 to possible unfair or deceptive acts or practices, has  
22 hindered the Commission in investigating or engag-  
23 ing in enforcement proceedings against such prac-  
24 tices; and

- 1           (9) a description of Commission litigation
- 2           brought in foreign courts.



Calendar No. 372

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1608**

[Report No. 109-219]

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## **A BILL**

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

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MARCH 14, 2006

Reported without amendment