



Practical Enforcement Cooperation: Lessons Learned

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Lessons Learned

- Learn from experience of other regulators.
 - “PHAEDRA should try to explore consumer protection and cross-border consumer protection, to see if there are lessons to be learned for privacy protection.” Draft report at 121.
- Build Domestic Capacity
- Build Relationships
- Build Tools



Experience of Other Regulators

- Spam
- Consumer Protection
- Competition
- Securities

Recommendations on Regulatory Cooperation

- OECD Revised recommendation of the Council Concerning Cooperation between Member countries on Anticompetitive Practices affecting International Trade (1995).
- OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (2003).
- OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws against Spam (2006).
- OECD Recommendation on Cross-border Co-operation in the Enforcement of Laws Protecting Privacy (2007).



Build Domestic Capacity

Practical attempts to cooperate are key to identifying, overcoming roadblocks

- US SAFE WEB Act Facilitates FTC Cooperation
 - Broadened evidence sharing.
 - Investigative assistance for “substantially similar” conduct to that prohibited in U.S.
- Other potential roadblocks:
 - Sharing non public enforcement information
 - Sharing evidence that contains PII.



US SAFE WEB Act

- Sharing Confidential and Compelled Information
 - Adds foreign law enforcement agencies to the list of agencies with whom FTC can share:
 - confidential consumer protection information (amends Section 6(f) of FTC Act, 15 U.S.C. 46(f)) and
 - consumer protection material obtained pursuant to compulsory process (amends Section 21(b)(6) of FTC Act, 15 U.S.C. 57b-2(b)(6))
- Type of Assistance
 - FTC may conduct an investigation to collect information and evidence using all of its investigative powers, e.g., Civil Investigative Demand.
 - FTC may seek appointment under 28 USC § 1782 to conduct civil discovery on behalf of civil authorities, or on behalf of criminal authorities when referred by the Attorney General.

US SAFE WEB Act Experience

(as of Mid 2012)



- More than 100 investigations with international components, such as foreign targets, evidence, or assets.
- More than 50 cases involving cross-border components.
- The FTC has provided evidence in response to 63 information-sharing requests from 17 foreign law enforcement agencies in nine countries.
- The FTC has issued 52 civil investigative demands in 21 investigations on behalf of nine agencies in five countries.

Example: Herbal Kings Spam



- Spam Network with participants in participants in Australia, New Zealand, China, India, Russia, Canada, and the United States.
- Assistance from
 - New Zealand Department of Internal Affairs;
 - the Australian Communications and Media Authority;
 - The FTC
- Stopped network that may have been responsible for billions of spam messages and millions of complaints.

Build Relationships

- London Action Plan (LAP) – anti-Spam.
- International Consumer Protection Enforcement Network (ICPEN).
- International Competition Network (ICN).
- International Organization of Securities Commissions (IOSCO).



Building Tools

The ability to quickly determine who is doing what would facilitate coordination and cooperation between GPEN members that are investigating the same company.

- Bilateral and Multilateral Arrangements
- Facilitates the forming of quick, ad hoc networks and task forces on specific matters.
- Model – the Consumer Sentinel System
 - Complaint sharing
 - Alert System



Resources

- Safe Web Act information & Reports
 - <http://www.ftc.gov/oia/information-sheet.pdf>
 - <http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf>
 - <http://www.ftc.gov/opa/2012/07/safeweb.shtm>
- Cooperation Examples:
 - <http://www.ftc.gov/opa/2012/10/pecon.shtm>
 - <http://www.ftc.gov/opa/2008/10/herbalkings.shtm>
- Other Networks:
 - <https://icpen.org/>
 - <http://londonactionplan.org/>
 - <http://www.internationalcompetitionnetwork.org/>
 - <http://www.iosco.org/>



Thank you!

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