

**Prepared Statement of
the Federal Trade Commission on**

The Electronic Signatures in Global and National Commerce Act

Before the

**Committee on Financial Services
United States House of Representatives**

Washington, D.C.

June 28, 2001

Mr. Chairman, I am Eileen Harrington, Associate Director for Marketing Practices in the Federal Trade Commission's Bureau of Consumer Protection.⁽¹⁾ Thank you for the opportunity to discuss the "reasonable demonstration" requirement of the consumer consent provision of the Electronic Signatures in Global and National Commerce Act (ESIGN). (A copy of the joint report submitted to Congress pursuant to Section 105(b) of ESIGN by the FTC and the Department of Commerce is attached as Appendix A.)

I. The FTC's Law Enforcement Authority and Experience

As the federal government's principal consumer protection agency, the FTC's mission is to promote the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices, and increasing consumer choice by promoting vigorous competition. To fulfill this mission, the Commission enforces the Federal Trade Commission Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁽²⁾ This experience provided useful grounding for the agency in fulfilling its mandate under Section 105(b) of ESIGN.

**II. The Electronic Signatures in
Global and National Commerce Act (ESIGN)**

***A. The Reasonable Demonstration Requirement of the Consumer Consent Provision:
Section 101(c)(1)(C)(ii).***

On June 30, 2000, the President signed ESIGN into law.⁽³⁾ The Act's purpose is to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. In enacting this legislation, however, Congress was careful to preserve the underlying consumer protection laws governing consumers' rights to receive certain information in writing; thus, Congress imposed special requirements on businesses that want to use electronic records or signatures

information required by state and federal law. The provision also discourages deception and fraud by those who might fail to provide consumers with information the law requires that they receive.

The reasonable demonstration requirement in Section 101(c)(1)(C)(ii) appears to be working satisfactorily at this stage of the Act's implementation. Almost all participants in the study recommended that, for the foreseeable future, implementation issues should be worked out in the marketplace and through state and federal regulations. Therefore, Commerce and the FTC in their joint report recommend that Congress take no action at this time to amend the statute.

IV. Conclusion

The Commission greatly appreciates the opportunity to describe its efforts to assess the impact of ESIGN Section 101(c)(1)(C)(ii), particularly its positive effect on preventing deception and fraud in the electronic marketplace.

Endnotes:

1. The views expressed in this statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any Commissioner.
2. 15 U.S.C. § 45(a).
3. Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. § 7001 *et seq.*). The majority of the statute became effective on October 1, 2000; the remainder went into effect this year.
4. Specifically, Section 105(b) of the Act requires that: "Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens;