

“Keep Internet Neighborhoods Safe”
A Proposal for Preventing the Illegal Internet Sales of Controlled
Substances to Minors

July 13th, 2006

Drug Strategies, working jointly with representatives of the Center for International Criminal Justice and the Berkman Center for Internet and Society at Harvard Law School, the Weill Medical Center at Cornell University, and the Treatment Research Institute at the University of Pennsylvania, has convened a working group of leaders from the public and private sectors to develop new strategies to curtail Internet drug trafficking, taking into consideration such issues as Internet regulation, online advertising, payment transfers, delivery services, U.S. and international law and education and prevention initiatives. In addition to academic experts, participants in the working group include representatives from Internet Service Providers (ISPs), search engines, banking and credit card companies, drug policy groups, and government agencies such as the U.S. Department of Justice, U.S. Customs and Border Protection, Royal Canadian Mounted Police, and the United Nations International Narcotics Control Board.

The working group has involved more than fifty participants and has held six conferences at Harvard Law School since early 2005. Based on extensive discussions conducted over the past year and a half, the working group has developed potential strategies to curtail illegal Internet drug sales by targeting key points of control.

What Is Needed?

Recommendations

A. Forbid websites offering to sell controlled substances without legitimate prescriptions and develop real-time information about violators:

1. Seek congressional legislation that would make illegal any offer over the Internet – wherever in the world it originates – to purchase or sell controlled substances without a legitimate prescription to customers within the United States. In addition, the legislation should require that any offer to deliver such a drug to a customer

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within the United States should display a large, clear warning that it is illegal to offer to sell or purchase controlled substances without a valid prescription. The legislation would also give the Independent Monitoring Group (IMG) established in A(2) below and those relying on the information it furnished immunity from legal liability for mistaken identification of websites made in good faith.

Under current law, only drugs classified in Schedule I of the U.S. Controlled Substances Act, such as heroin, marijuana, and crack cocaine, cannot legally be offered for sale under any circumstances. Drugs in Schedules II-V of the Controlled Substances Act, such as Vicodin and Oxycontin, can legally be prescribed by physicians for medical purposes. The proposed new legislation would prohibit any offers to sell Schedule II-V drugs over the Internet without a legitimate prescription. In addition, this measure would require that *all* websites offering to sell controlled substances display a highly visible warning that offering to sell or purchasing these drugs in the United States without a valid prescription is illegal.

Prohibited offers to sell can be detected by private parties without need of an actual purchase of the drugs. Failure to comply with the required warning will enable us to rapidly and unmistakably identify illegal offers to sell controlled substances without a prescription. On the basis of this identification, without need of purchase or even the need to draw on scarce law enforcement resources, we can trigger a variety of private responses.

2. Create the IMG to identify websites or other internet facilities offering to sell controlled substances without prescription or without a warning that a prescription is needed and provide the names and Internet addresses of these websites to credit card companies and other payment systems, ISPs, search engines, common carriers, the U.S. Postal Service, the Drug Enforcement Administration, and other relevant federal agencies. On receiving reliable information that those associated with such a website have come into compliance with U.S. law, the IMG will relay that information to those previously advised of its illegal practices.

The Independent Monitoring Group (IMG) would be a small, non-profit organization established to monitor the Internet on a continuing basis for websites that offer to deliver to a customer within the United States controlled substances without a prescription valid in the United States. It would also receive information about sources from treatment facilities. The IMG would develop a real-time template that would provide regular updates of the names of these websites, including the URL, payment mechanisms advertised (e.g., Visa, Mastercard), and any

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other purchase and delivery data. The IMG would serve as an efficient conduit of publicly available information to credit card companies, ISPs, common carriers, and key federal agencies so that they could take appropriate action as described below.

Today, the bulk of illicit sales are conducted in a relatively open way. As enforcement increases, new ways will emerge for connecting buyers and sellers of controlled substances without prescription. Already there is evidence that chat rooms provide forums for drug trafficking. Spam is an additional source of offers. As Internet connectivity continues to expand to cellular telephone systems, there is every reason to anticipate that these, too, will become advertising and distribution networks for the illegal sales of controlled substances. The IMG, guided by an independent Board of Directors comprised of experts in technology and enforcement, will be required to continue to develop new methods of tracking and identifying websites that offer to sell controlled substances without prescription over the Internet. This may require that Congress grant immunity to IMG and those relying in good faith on its list from liability for any mistaken identifications made by IMG in good faith.

B. Empower Families to Limit Home Access To Websites Illegally Selling Controlled Substances:

- 1. Require ISPs to offer their customers a managed service or device that could be configured to block access to websites offering to sell controlled substances without prescription.**

Parents are deeply concerned about the safety of their children where they live and go to school. Parents should be able to limit their children's access to drugs in the virtual neighborhood of the Internet, whether the parents are technically savvy or not. ISPs should be required to ask each of their customers if they want to have a firewall or other filter block access to websites offering to sell controlled substances without prescription. The largest of the ISPs already offer parental controls which do, or could be adapted to, serve this valuable function. (This requirement of offering a filtering service might be waived for ISPs with fewer than 2,500 clients, universities, and corporate enterprises.)

Earlier efforts by federal and state governments to mandate filtering systems in the area of pornography have failed because of spillovers to legitimate areas. These schemes have most often faltered by permitting or requiring ISPs to use Internet Protocol ("IP") based filtering. Where a filtering system is based on an ISP blocking designated IP addresses, the filter can block numerous lawful sites that share the same IP address.

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Our recommendation takes a different, more effective approach by requiring customer specific URL-based filtering. It would give the ISP the option of using a software or hardware filtering system implemented on the ISP end, *but only if the ISP could apply the filter solely to the network traffic of those customers requesting it.* Even when a filtering system is URL-based, if the ISP can effect the filtering only by applying it to all of its customers and not just the ones requesting it, the spillover effect harms valued First Amendment interests of otherwise lawful Internet users. If the ISP's network configuration did not permit customer specific, URL-based filtering, or if it was simply more economical for the ISP, the ISP could implement the filtering system through software on the customer's computer, just as many ISPs presently implement anti-virus and anti-spam filters and Microsoft implements the firewall built into Windows XP.

Information about websites offering to sell controlled substances without prescription would be provided to ISPs and filtering software manufacturers by the IMG and updated constantly. At the customer's request, ISPs would configure and update a filtering service on their network or make updates available to firewall or filtering software on their customers' computers using this list, in a manner similar to Microsoft's Windows Update, Symantec's Live Update, and other companies' automated update systems. In the future, as technologies converge, similar requirements should apply to cell phone service providers and all other distributors of electronic communications.

ISPs alternatively may want to make a simpler and broader option available to their customers. There is no reason why parents who do not want to be able to purchase controlled substances over the Internet need to have access to websites selling them in their home. An ISP could, directly or through a third party provider such as LookSmart's Net Nanny, offer its customers a system that blocks access to any website selling prescription drugs over the Internet, whether lawfully or unlawfully.

C. Prevent Misuse of Financial Institutions

1. Establish the necessary "Know Your Customer" regulations for credit card companies both domestically and internationally.

Banks have long had obligations to "know their customers" to combat illegal uses of the banking system. Credit card companies and common carriers (FedEx, UPS, etc.) should adopt a similar standard and enforce it globally among their networks of merchant banks and acquirers. In particular, merchant banks, regardless of jurisdiction, should be contractually bound to

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perform appropriate due diligence to ensure that illicit narcotics dealers are not being given access to credit card accounts. The dominant roles of credit card franchises and common carriers would provide powerful leverage on institutions globally. If banks outside the U.S. desire to participate in the benefits of the credit card network, then these banks would be required to enforce appropriate due diligence standards.

2. Develop and enforce enhanced due diligence protocols for credit card companies.

Credit card companies should implement internal procedures to investigate use of their credit cards to make purchases from the illegal websites whose names and addresses are reported to them by the IMG. If our proposal is followed, upon receipt of credible information from the IMG regarding websites illegally offering to sell controlled substances, credit card companies and other actors in the financial system would undertake enhanced due diligence. Specifically, they would be required to process fake purchases from these websites, using phony credit cards in order to identify the merchant bank, which would in turn be required to identify the actual merchant (i.e., the party offering to sell controlled substances using credit cards for purchasers). The credit card companies would promptly furnish all this information to DEA. The credit card company would then cut off credit to this customer (the drug seller) if, after five working days, the DEA did not request the company to refrain from such action on the ground that it would interfere with an ongoing investigation. Credit card companies should inform customers of the proposed due diligence monitoring and the resulting actions upon evidence of non-compliance should be built into their merchant contracts both domestically and internationally.

3. Enforce these same standards for other payment mechanisms.

In addition to credit cards, illegal pharmacy websites accept other payment mechanisms, such as PayPal and “electronic checks” (ACH). These systems are processed through the banking system or the credit card system (e.g., PayPal often links to a credit card account). Banks that provide the funds-clearing mechanisms for these systems should enforce similar due diligence and Know Your Customer standards as do the credit card merchant banks.

4. Ensure that U.S. Treasury raises this issue in Financial Action Task Force (FATF) negotiations.

The U.S. Treasury Department should give this issue high priority in its discussions at FATF so that international standards are developed and enforced. The system should ensure that nations and banks are “named and shamed” when the national regulatory or compliance systems

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are inadequate and countries continue to turn a blind eye to illicit website drug merchants operating in their territory.

5. Establish information sharing and investigative cooperation between credit card companies and law enforcement agencies.

The Independent Monitoring Group, credit card companies, and government agencies should establish clear channels of communication to enable real-time information sharing about potential offenders. The Department of Justice and Homeland Security and their agencies should be authorized and directed to maintain liaison with IMG and to make purchases where this would facilitate identification of illicit sellers, sources of drugs, or methods of finance and transportation.

D. Strengthen Law Enforcement and International Cooperation

1. Direct DEA to create dedicated internal structures of an adequate size to help coordinated domestic and international law enforcement efforts to curtail illegal sales of controlled substances over the Internet. DEA should be expected to act on information received from the IMG and credit card companies about Internet drug traffickers, and to use that information to work with law enforcement counterparts in other countries, with the goal of prosecuting these traffickers and seizing their assets wherever in the world they may be.

DEA should establish an office to receive and analyze information about illegal websites received from the IMG or private parties, to monitor resulting enforcement efforts, and to serve as an efficient channel of communication for the credit card companies, ISPs, pharmaceutical companies and others to pass on information about illicit vendors. The office should maintain public records of the reports it receives, the occasions on which it has requested a delay of any private action, and the actions it and its foreign counterparts have taken.

2. The DEA should work with U.S. and multi-national pharmaceutical companies to identify the source of controlled substances offered for sale without prescription over the Internet.

Whenever DEA obtains samples of illegally sold controlled substances through online purchases by its own agents or from U.S. Customs, the U.S. Postal Service, or private carriers who have intercepted them, it should send these samples to pharmaceutical companies to enable them

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to determine the source of the drug (e.g., whether it is a legitimate drug that was illegitimately diverted or a patent-infringing copy of the company's drug). The DEA should also obtain information from covert online purchases and, as soon as consistent with law enforcement, furnish that information to credit card companies so that they can identify and shut down merchant accounts being used for illegitimate purposes.

3. Build international cooperation and commitment to fighting this problem on a global scale.

The U.S. government should give high priority to curtailing illicit Internet sales of controlled substances both in its bilateral relations with other governments and in its policy positions in international organizations. In addition, the State Department and the U.S. Delegation to the United Nations Commission on Narcotic Drugs should lead an effort to strengthen enforcement of the Single Convention on Narcotic Drugs, particularly Articles 30, 31, and 36 (which together require signatories to make criminal the distribution of narcotic drugs without prescription.) The Department of Justice and DEA should coordinate with the State Department to pursue U.S. enforcement efforts under the Convention. These departments and agencies should urge the International Narcotics Control Board (INCB) to report annually to the United Nations General Assembly on the scope and seriousness of Internet trafficking in controlled substances.

E. Enhance Border Interdiction

1. Direct U.S. Customs and Border Protection ("CBP" or "Customs") to seek and use information from private carrier and credit card companies and from the IMG to monitor and intercept illegal shipments into the United States of controlled substances sold without prescription.

Millions of packages coming from abroad are processed daily through Customs international mail facilities. Packages containing illegal controlled substances are likely designed to be generally indistinguishable from the rest. In addition to conducting random searches of incoming packages in an effort to intercept illegal drugs, Customs officials should use information provided by the Independent Monitoring Group and credit card companies regarding the names and addresses used by individuals and companies who offer to sell controlled substances over the Internet without a legitimate prescription. Based on this information, Customs officials should make every effort to target and interdict these illicit shipments. Upon interdiction of illegal controlled substance shipments, Customs should notify the intended recipient, and, for interdictions considered to be commercial quantities, the Drug

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Enforcement Agency for possible prosecution of the original shipper. Customs should analyze and process data taken from intercepted shipments of controlled substances (such as point of origin) to improve the effectiveness of interception of future shipments.

2. When private carrier companies have reason to believe that certain packages may contain illegally sold controlled substances, they should immediately provide Customs officials as much identifying information as possible, including shipping account and credit card numbers.

Since private common carriers often receive or pick up packages directly from shippers, they may be able to identify transactions that appear suspicious. Under earlier recommendations carriers will also receive information on suspicious transactions from the IMG and from credit card companies. If, on these bases, they suspect that they are transporting packages that contain illegal controlled substances, carriers should provide to Customs officials all identifying information, including shipping account and any available credit card numbers. In particular, the credit card numbers would be useful to Immigration and Customs Enforcement (ICE) and DEA in criminal investigations of commercial shipments. The Interagency Pharmaceutical Task Force is a vehicle to share such relevant data about suspicious shipments among CBP, ICE, and DEA. Private carrier companies should be encouraged to comply with these procedures through incentive programs; for example, Customs could use voluntary compliance in this program as a factor in determining whether a specific carrier receives enhanced customs privileges.

F. Launch nationwide education and prevention campaigns

1. Direct the National Institute of Drug Abuse (NIDA), the Substance Abuse and Mental Health Services Administration (SAMHSA) as well as private organizations, such as the Partnership for a Drug Free America (PDFA), to educate parents and other concerned adults about the increasing non-medical use by youth of addictive, potentially lethal synthetic narcotics, such as Vicodin and Oxycontin.

The most recent national surveys report that adolescent non-medical use of highly addictive, synthetic, prescription drugs is rapidly increasing. These drugs include opiate painkillers (narcotics) such as Vicodin and Oxycontin, sedatives such as Ambien, and tranquilizers such as Valium and Xanax. These increases are occurring in the face of the otherwise encouraging news that among youth ages 12 to 17, past month illicit drug use overall has declined 19% since 2001. After alcohol and marijuana, Vicodin (without prescription) is now the most widely used drug among high school seniors. Although media coverage of this emerging phenomenon of

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“pharming” (misuse of pharmaceutical drugs) is increasing, many parents do not believe that these drugs are a threat to their children.

2. Direct NIDA, SAMHSA, and private organizations, such as the PDFA, to educate adults and youth on the dangers of using synthetic narcotics without prescription, including accidental injuries, dependence, overdose, and death, particularly when used in combination with alcohol.

Adults and youth may not view controlled substances, like Vicodin, which can be obtained without prescription over the Internet, as equally “dangerous” as narcotics which can be bought from street dealers or classmates, especially since the drugs are widely prescribed by doctors for legitimate medical purposes. The ease with which these drugs are obtained over the Internet, their packaging, and their appearance of legitimacy can contribute to the belief that such drugs are relatively safe when in fact these drugs can be lethal when taken in high doses or in combination with alcohol. The risk for overdose and dependence derives from the dosage, potency of the drug and the vulnerability of the person using it – not the source of the drug or its brand name. A recent national survey by the Partnership for a Drug Free America (2005) reported that almost half of teens said they believe that prescription drugs, even if not prescribed by a doctor, are much safer than street drugs and almost a third said that prescription pain killers, even if not prescribed, are not addictive.

3. Encourage the Internet Service Providers (ISPs) to educate their customers about new technological safeguards such as firewalls and parental control software that can prevent the use of a family computer for the illegal purchase of prescription drugs.

ISPs can make technological safeguards (as described above in Recommendation B) widely available to their customers who want to block websites that offer to sell controlled substances without prescription. The ISPs should regularly notify all customers of this opportunity to create a safe Internet neighborhood for their families as well as continue to update the technology as needed.

4. Enlist all major Internet search engines to display prominently a warning that it is illegal to purchase controlled substances without prescription over the Internet in the United States and links to drug education websites describing the dangers of non-medical use of powerful prescription drugs, such as Vicodin or Oxycontin. The warning and links should be activated whenever Internet users request a search for any controlled substance.

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To buy controlled substances over the Internet, adolescents must find sellers. Many adolescents who use the internet to find everything from music downloads to movie tickets will naturally turn to search engines to locate prescription drugs, as well. Internet search engines can immediately begin to play a deterrent rather than facilitating role by placing forceful warnings at the top of search results when users search for controlled substances. They can also help educate Internet users about the dangers of non-prescription use of controlled substances by providing links to drug education websites, such as www.drugfree.org (Partnership for a Drug Free America) when these search requests are made. Currently, one major search engine, Google, when queried about Oxycontin posts a warning that purchasing drugs online may be a crime, linking to a DEA webpage that discusses issues relating to online purchase of prescription narcotics. Similar strong initiatives should be taken by other search engines and by all search engines for other controlled substances as well as Oxycontin.

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