



nabp

National Association of Boards of Pharmacy

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December 19, 2013

Fadi Chehade, President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536 USA

Dear Mr Chehade:

This letter follows a letter the National Association of Boards of Pharmacy[®] (NABP[®]) sent to you on November 21, 2012, regarding the proliferation of rogue Internet pharmacies operating via Internet Corporation for Assigned Names and Numbers (ICANN)-accredited Domain Name Registrars in violation of the 2009 Registrar Accreditation Agreement (2009 RAA) and Uniform Dispute Resolution Policy (UDRP).

As you are aware, the 2013 RAA adds explicit obligations for Registrars to investigate reports of “Illegal Activity,” including alleged violations of applicable laws, (Section 3.18.1) and take action (Section 3.18.2). The phrase “Illegal Activity” is defined in Section 1.13 to mean conduct involving “use of a Registered Name sponsored by Registrar that is prohibited by ‘applicable law’.” Should the Illegal Activity continue, the 2013 RAA gives ICANN the express authority to terminate its Agreement with a Registrar (Sections 5.5.4 and 5.5.6). Similarly, the Uniform Dispute Resolution Policy (UDRP) prohibits the use of domain names “for an unlawful purpose” (UDRP, Paragraph 2).

On behalf of the government agencies that license and regulate the practice of pharmacy in the United States, Canada, and other countries whose regulatory boards NABP represents, the purpose of this letter is to formally advise you, the ICANN Board of Directors, and all ICANN-accredited domain name Registrars that the “applicable laws” pertaining to any sale, marketing, prescribing, or dispensing of prescription drugs include the laws and regulations of any jurisdictions (country, state, province, prefecture, et cetera) of a Web site’s intended customers (where the Web site offers to ship drugs to), not merely the laws and regulations where the Web site operator resides, the drugs are shipped from, or where the domain name Registrar is located.

About the National Association of Boards of Pharmacy

NABP is the independent, international, and impartial Association that assists its member regulatory boards and jurisdictions in developing, implementing, and enforcing uniform standards for the purpose of protecting the public health. NABP’s member boards are government agencies that regulate pharmacies and pharmacists in their jurisdiction. NABP is the only professional association that represents these government agencies in all 50 United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, New Zealand, nine Canadian Provinces, and Australia.

About Rogue Internet Drug Outlets

NABP research has found that nearly 97% of Web sites engaged in the sale of prescription drugs violate applicable drug safety laws and pharmacy practice standards, putting patients at risk. These are not merely technical legal violations, but have a direct effect on human and animal safety. Rogue Internet drug outlets typically violate laws in three ways, by (1) selling counterfeit medication, (2) selling prescription medicine without a valid prescription, and (3) operating without the required valid pharmacy license(s). With roughly 35,000 to 50,000 active Internet pharmacy Web sites operating at any one time, many of which make millions of US dollars in sales each month, we know that this global public health threat will continue unless further action is taken.

What the Laws and Regulations Require

Although every country has its own laws and regulations, there is a remarkable degree of uniformity across all nations pertaining to drug safety and pharmacy practice laws, regulations, and standards. Across the globe, relevant laws and regulations incorporate the following principles:

- If a drug is designated as a prescription-only medicine, it may not be provided to a customer without a valid prescription. This means that with specific, rare exceptions that we are aware of (and exempt from notifications to Registrars), a prescription drug may only be prescribed by a medical practitioner (eg, an in-person examination) licensed in the patient's jurisdiction who has examined the patient.
- Pharmacies must either be licensed in the patient's jurisdiction or be recognized through a reciprocity process.
- Only drugs approved for sale in the customer's jurisdiction may be sold; again, with specific, rare exceptions that we are aware of (and exempt from abuse notifications to Registrars), drugs imported from outside of the patient's country directly to the patient are considered unregulated for safety and efficacy and thus unapproved for sale.

"Rogue" Internet drug outlets, also commonly known as "illegal online drug sellers" or "illegal Internet pharmacies," typically disregard not just one of the criteria above, but often all of them. There is simply no excuse for a Registrar to ignore abuse notifications regarding domain names engaged in such activity that can have serious, even fatal, consequences for human and animal health.

LegitScript Abuse Notifications and ICANN-Accredited Registrars

On behalf of the NABP's member regulatory boards, NABP continues to recommend and request that domain name Registrars act on abuse notifications submitted to them by LegitScript, LLC (LegitScript.com), an Internet pharmacy monitoring and classification program that bridges the gap between Internet/e-commerce platforms and drug safety/pharmacy licensure regulatory authorities by submitting notifications to Registrars about illegal prescription drug marketing Web sites and assisting Registrars in interacting with registrants.

LegitScript is well aware of where exceptions exist to these common global standards (eg, where pharmacy licensure reciprocity exists as a matter of regulation) and Internet pharmacies falling under an exception are not designated as rogue and not included in rogue Internet pharmacy abuse notifications to Registrars.

Safe Haven Registrars

NABP applauds the majority of Registrars who voluntarily take action against illegal online drug sellers by suspending and locking those Web sites' domain names submitted to them by qualified private entities or regulatory authorities. However, we note that LegitScript data indicates that most illegal online pharmacies are now clustering at a relatively small number of ICANN-accredited Registrars that are serving as "safe havens" for these dangerous Web sites. Despite multiple notifications to these Registrars, along with supporting evidence of illegality, the following ten Registrars have been identified as the "top 10" Registrars that serve as "safe havens" for this illegal activity, thus knowingly profiting from and facilitating illegal online pharmacies, and protecting their continued presence on the Internet.¹

1. TodayNIC– China
2. BizCN– China
3. Joker.com– Germany
4. WebNIC.cc– Malaysia
5. Tucows– Canada
6. Oname/ GMO Internet– Japan
7. Momentous Group/Rebel.com– Canada
8. Paknic– Pakistan
9. IPMirror– Singapore
10. Dattatec– Argentina

To be clear, NABP recognizes that at the moment that a domain name is registered, it does not point to any content, and as such, it is typically difficult for a Registrar to foresee that a domain name will be used in furtherance of criminal activity. Rather, NABP's concern is about Registrars that have been notified, in many cases on repeated occasions, about rogue Internet pharmacy domain names already shown to be engaged in illegal activity, but that have declined to suspend and lock the domain names, and in many cases, have continued to permit re-registration of the domain names, thus continuing to profit from and facilitate the illegal activity in question.

Applying the 2013 RAA and UDRP

In many cases, when these Registrars receive an abuse complaint, they either respond that a court order is required, or that they are not violating the laws of the Registrar's country. ICANN Compliance has previously stated, in writing, that **a court order is not required** for a Registrar to suspend and lock domain names engaged in illegal behavior, and many Registrars do not require a court order to act on abuse complaints.²

NABP trusts that ICANN will accurately require compliance with the language in the 2013 RAA, which requires Registrars to take action against domain names used in "violation of applicable laws and regulations." In doing so, we emphatically remind ICANN that the "applicable law" is not solely the law of the Registrar's country. Rather, **"applicable laws" refers to the laws and regulations of the jurisdictions where the domain name is being used to sell drugs to.**

For example: A domain name is registered with a Registrar in Germany and uses the Web site to sell

¹ LegitScript: <http://blog.legitscript.com/2013/09/top-10-rogue-registrars-august-2013/>

² See http://www.legitscript.com/download/ICANN_Letter_regarding_domain_name_suspensions.pdf. Indeed, this would be an impossible requirement, because most courts would not issue court orders to entities such as Registrars in another jurisdiction: a US court would not, for example, issue a court order to a Registrar located in Japan, since the Registrar is not within the court's jurisdiction – precisely the dynamic that illicit drug distributors, and the Registrars that harbor them, count on to get away with their crimes.

illicit pharmaceuticals to US and Japan residents — but not German residents. In this case, the Registrar may respond that because the illegal online pharmacy is not selling to German residents, it is not violating German law and is thus not illegal. That is wrong.

In this example, “applicable law” includes the laws of Germany, the US, and Japan. The domain name’s use must therefore comply with the laws and regulations of each applicable country, irrespective of the registrant’s, Registrar’s, reseller’s, or drug distributor’s location. Even for Registrars that will remain bound by an earlier version of the RAA, this interpretation holds true for Paragraph 2 of the UDRP as well, in which a Registrar is required to prohibit the use of a domain name for unlawful purposes.

Call to Action

As pharmacy regulators dedicated to patient safety, NABP’s members are committed to enforcing pharmacy laws and practice standards offline and online. When it comes to the Internet, however, we cannot do it alone, as the global nature of Internet pharmacy crime requires international coordination and private sector action. For that reason, we are glad to see the clarifying language in the 2013 RAA stating that domain names may not be used in violation of applicable laws and regulations and the new, affirmative obligation under the 2013 RAA on Registrars to investigate reports of Illegal Activity.

However, the NABP emphasizes that ICANN must require Registrars to accurately interpret these provisions of the RAA. A domain name registrar in China, Canada, or Malaysia may not serve as a “safe haven” for domain names used to sell falsified prescription drugs, or prescription drugs without a valid prescription or valid pharmacy license, to residents of (for example) the US, European Union, or Japan, and rebuff abuse complaints submitted on behalf of regulatory authorities by arguing that even if the domain name is violating the laws of the patients’ countries, it is not violating the laws of the Registrars’ country. This result – which constitutes the status quo – makes a mockery out of the contractual requirements imposed on Registrars.

NABP renews our request to ICANN and to all Registrars to ensure that their registration services are not used by illegal online drug outlets. We also encourage ICANN and Registrars to collaborate with LegitScript to identify, prioritize, and pursue contractual enforcement against rogue Registrars and registries.

NABP welcomes the opportunity to support ICANN in any efforts to ensure Registrars, registries, and the registrants they serve fully comply with applicable laws in order to protect patients worldwide. I am available to discuss our concerns with you over the phone or in person as well.

Sincerely,

NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY



Carmen A. Calizone, MS, RPh, DPh
Executive Director/Secretary

Enclosure: NABP Recognition Letter to LegitScript (2012), including LegitScript International Internet Pharmacy Certification Standards