**CCTRT Draft Report**

**PUBLIC COMMENT**

**.PHARMACY REGISTRATION POLICY HINDERS ACCESS TO AFFORDABLE MEDICATION**

May 19, 2017

Launched in 2003, PharmacyChecker.com ([www.pharmacychecker.com](https://www.pharmacychecker.com/)) verifies U.S. and international online pharmacies and compares prescription drug prices. We are a stakeholder in the online consumer-driven healthcare community, seeking an open Internet environment that promotes business models that advance public health. I appreciate the opportunity to submit a public comment on the CCTRT draft report pertaining to ICANN’s gTLD expansion and its impact on competition, consumer trust and consumer choice.

The use of the .PHARMACY registration, as operated by the National Association of Boards of Pharmacy (NABP) impedes competition, confuses consumers and erodes their trust in a manner detrimental to public health. NABP’s application, funded by large pharmaceutical companies and promoted by the U.S. pharmacy industry to run .PHARMACY, extends their regulatory capture in the U.S. to the realm of Internet governance, which corrupts the spirit of ICANN.[[1]](#endnote-1) For reasons that sholudl be self-evident, a U.S.-controlled, pharmaceutical industry-backed domain registry should not determine for global consumers what are legitimate online medication sales.

On the subject matter of online pharmacies, drug safety and access, I have testified before the U.S. House Judiciary Subcommittee on the Courts, Intellectual Property Rights and the Internet;[[2]](#endnote-2)

published an op-ed in the New York Times[[3]](#endnote-3);  and authored a chapter in an anthology called *Hacking Politics* about defeating the Stop Online Piracy Act (SOPA).[[4]](#endnote-4) Recently, I led a panel at the RightsCon Conference in Brussels entitled “Online Access to Affordable Medication: Applying Human Rights Law to Cyber Rule-Making and Internet Governance.”[[5]](#endnote-5)

Our company operates the PharmacyChecker Verification Program, through which online pharmacies are verified and permitted membership only if they meet exemplary standards of practice.[[6]](#endnote-6) Millions of consumers worldwide come to PharmacyChecker.com to find licensed pharmacies that will sell them properly dispensed, genuine medication at a price they can afford. For those who cannot afford medication locally, these online options are a lifeline.

In my estimation, NABP’s eligibility criteria for use of .PHARMACY is designed to discriminate against online pharmacies that process prescription drug orders for international delivery to patients in the U.S., leading consumers to believe that only websites with .PHARMACY are safe, and promoting the interests of pharmaceutical companies through its role as global governor for online pharmacy legitimacy.

Our verification program is run by Kelly Ann Barnes, JD, RPh, formerly the Director of Pharmacy Quality Assurance for the Massachusetts Board of Registration in Pharmacy. Ms. Barnes is a trusted member of the pharmacy community and a participant in NABP initiatives to strengthen pharmacy practice and safety.[[7]](#endnote-7)

Among the criteria verified in the PharmacyChecker Verification Program are pharmacy licensure, prescription requirements, marketing claims, privacy protocols, personal data security, and transparency of pharmacy location. Eligible online pharmacies are authorized to publish the PharmacyChecker Seal, which helps build trust with consumers. Peer-reviewed and independent research, which includes evaluating online pharmacy practices, medication quality and consumer surveys, demonstrate the safety of international online pharmacies approved by PharmacyChecker and its benefit to patients seeking lower cost medication via the Internet.[[8]](#endnote-8)

PharmacyChecker-approved online pharmacies that sell medication to people in the U.S., unless they have a U.S. pharmacy license, are not eligible to obtain .PHARMACY due to NABP’s anticompetitive restrictions. Pharmaceutical companies and U.S. pharmacy associations fund media relations, advertising and marketing campaigns informing patients to look to the “right of the dot” before buying medication online to avoid counterfeit or otherwise dangerous medication.[[9]](#endnote-9) In the U.S., where 45 million people did not fill a prescription in 2016 due to cost[[10]](#endnote-10), patients are scared away from safe and effective medication that is affordable due to this misuse of the .PHARMACY registration.

In February 2015, I published a report for the benefit of the U.S. Senate Health, Education, Labor and Pensions Committee and the House Energy and Commerce Committee pertaining to online pharmacies, which warned about NABP’s application to ICANN for .PHARMACY:

“Using funds provided by Eli Lilly, Merck and Pfizer, the NABP applied to the Internet Corporation for Assigned Names and Numbers (ICANN) to operate a generic top-level domain (gTLD) called .PHARMACY. The NABP will use the .PHARMACY designation to identify any international online pharmacy as rogue if it sells to people in the U.S. Pharmacies such as Walgreens, CVS, and Rite Aid can expect to obtain permission to register a .PHARMACY web address, whereas the safest international online pharmacy will be prohibited from doing so. NABP will launch public education campaigns urging consumers to avoid any drug-selling website that does not have .PHARMACY at the end of it, which could scare more Americans away from safe and affordable medication. At the time of this writing, the .PHARMACY string has been delegated to NABP, but ICANN is facing pressure from consumer groups and the ICANN community to delay its full implementation.”[[11]](#endnote-11)

Unfortunately, the consumer groups that opposed NABP’s application, including Public Citizen and Knowledge Ecology International, globally respected activist groups focused on access to affordable medication, and a petition signed by almost 25,000 consumers opposed to NABP’s registration rules, were not sufficient to prevent ICANN from approving NABP’s application.[[12]](#endnote-12) All the concerns noted in my report above are now a sad reality.

The mission statement of NABP is as follows: “NABP is the independent, international, and impartial Association that assists its member boards and jurisdictions for the purpose of protecting the public health.” How can the NABP consider itself independent in its .PHARMACY scheme when it was funded and promoted by pharmaceutical companies?[[13]](#endnote-13)

The vision of NABP is as follows: “Innovating and collaborating today for a safer public health tomorrow.” The Internet gave rise to innovation in the form of international online pharmacies, which by any objectively analysis serve public health by helping people afford medication they may otherwise go without. NABP’s main focus lies in supporting U.S. State Boards of Pharmacy, which consist of governing bodies dominated by U.S. pharmacy business interests that lobby to prevent international pharmacy competition.[[14]](#endnote-14)

The Internet is not supposed to be governed by multinational corporations that get to make rules for what is permissible online. This is exactly what is happening with NABP’s use of .PHARMACY. For the above reasons, I recommend that ICANN hold a transparent and public review of the .PHARMACY registration to ensure that NABP revises its registration policies to align with ICANN’s goals to promote competition, innovation, and the rights of end users to full enjoyment of the Internet. I am at ICANN’s service in helping bring this to fruition.

Sincerely,

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1. Malcolm, Jeremy, “How Big Pharma’s Shadow Regulation Censor the Internet,” October 6, 2016, Electronic Frontier Foundation. See <https://www.eff.org/deeplinks/2016/09/how-big-pharmas-shadow-regulation-censors-internet> [Last accessed 12/11/2016]. [↑](#endnote-ref-1)
2. “The Role of Voluntary Agreements in the U.S. Intellectual Property System,” Hearings before the Judiciary Committee, Subcommittee on the Courts, Intellectual Property and the Internet, September 18, 2013, 2141 Rayburn House Office Building (Testimony of Gabriel Levitt); See <https://judiciary.house.gov/wp-content/uploads/2016/02/091813-Testimony-of-Gabriel-Levitt.pdf> (last accessed 5/19/2017). [↑](#endnote-ref-2)
3. Levitt, Gabriel, “Scare Tactics Over Foreign Drugs,” March 24th, 2014, *New York Times*. See <http://www.nytimes.com/2014/03/25/opinion/scare-tactics-over-foreign-drugs.html> [Last accessed 12/11/16]. [↑](#endnote-ref-3)
4. Levitt, Gabriel, “SOPA’s Elevation of Profits over Patients: The Online Pharmacy Story.” In MOON, DAVID, et al., editors. *Hacking Politics: How Geeks, Progressives, the Tea Party, Gamers, Anarchists and Suits Teamed Up To Defeat SOPA and Save the Internet*. New York; London, OR Books, 2013. *JSTOR*, www.jstor.org/stable/j.ctt1bkm5rz. [↑](#endnote-ref-4)
5. See <https://events.bizzabo.com/RightsCon/agenda/session/177190>. [↑](#endnote-ref-5)
6. See <https://www.pharmacychecker.com/sealprogram/choose.asp>. [↑](#endnote-ref-6)
7. National Association of Boards of Pharmacy Newsletter, February 2016, vol. 45, No. 2; see <https://nabp.pharmacy/wp-content/uploads/2016/07/February-2016-NABP-Newsletter-FINAL.pdf> (Last accessed 5/19/2017). [↑](#endnote-ref-7)
8. Bate, Roger, Ginger Zhe Jin, and Aparna Mather, “In Whom We Trust: The Role of Certification Agencies in Online Drug Markets,” *The B.E. Journal of Economic Analysis & Policy*. December 2013, Volume 14, Issue 1, Pages 111–150, ISSN (Online) 1935-1682, ISSN (Print) 2194-6108, DOI. [↑](#endnote-ref-8)
9. Hoberman, Sarah and Glenn Ruppel, “How to Order Prescription Drugs Online Safely,” ABC News Online, May 15, 2015. See http://abcnews.go.com/US/order-prescription-drugs-safely-online/story?id=31047387 (Last accessed 5/19/2017). [↑](#endnote-ref-9)
10. Bluth, Rachel, “Trump’s Promise to Rein in Drug Prices Could Open Floodgate to Importation Laws,” March 22, 2017, Kaiser Health News. See <http://khn.org/news/trumps-promise-to-rein-in-drug-prices-could-open-dam-to-importation-laws/> (Last accessed 5/19/2017). [↑](#endnote-ref-10)
11. Levitt, Gabriel, “Online Pharmacies, Personal Drug Importation and Public Health: Ill-Considered Enforcement Prevents Access to Safe and Affordable Medication” February 2015. See <https://www.pharmacychecker.com/online-pharmacies-personal-drug-importation-public-health.pdf> [Last accessed 12/11/16]. [↑](#endnote-ref-11)
12. Levitt, Gabriel “Protecting Online Access to Safe and Affordable Medication,” September 12, 2016, Circle ID. See <http://www.circleid.com/posts/20160912_protecting_online_access_to_safe_and_affordable_medication/> [Last accessed 12/11/2016]. [↑](#endnote-ref-12)
13. NABP Coalition Support for .PHARMACYhttps://www.nabp.net/programs/pharmacy/pharmacy-and-nabp/coalition-support (Last accessed 7/21/2014). [↑](#endnote-ref-13)
14. For well over a decade, U.S. pharmacies have lobbied against personal drug importation, such as through the National Association of Chain Drug Stores (NACDS). NACDS’s government affairs VP asserted in congressional testimony: “Legitimate pharmacies in the U.S. lose business each time a consumer buys from a drug importer rather than visiting their local pharmacies,” in a letter to John Morrall, Officer of Information and Regulatory Affairs, OMB, from S. Lawrence Kocot, Senior Vice President and General Counsel, NACDS, dated May 28th, 2002. [↑](#endnote-ref-14)