

Testimony of  
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"Keep Internet Neighborhoods Safe"

Preventing the Illegal Internet Sales of Controlled Substances to Youth

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Chairman Leahy, Senator Specter and other members of the Committee, we are pleased to testify before you today about a significant but still largely unaddressed threat to our young people --- the growing tragedy of addiction and death from powerful narcotic painkillers bought without prescription over the Internet. Although the problem has received considerable press coverage, including a major series in the Washington Post in 2003, no sustained action has been taken to curtail expanding illegal internet drug sales. This is all the more surprising because taking action would not involve freedom of speech issues nor invoke opposition from either political party or the business sector. In short, no one supports selling controlled substances without valid prescriptions over the internet to our youth, and yet nothing is happening to stop this traffic.

We commend the Senate Committee on the Judiciary for taking the lead in developing effective responses to the growing problem of illegal drug sales over the internet, which is one example of the many ways the internet can and will be used in the future for criminal activities. We share with you the conviction that it is time to take action to curtail cyber-trafficking of dangerous drugs before it expands even further. We believe that the most effective way of doing so is by engaging the active cooperation of the legitimate businesses that now unwittingly facilitate this traffic. Only the Congress can assure this cooperation.

#### The Problem

Our "Keep Internet Neighborhoods Safe" (KINS) initiative began in early 2005, when we learned of the extensive research conducted by the Treatment Research Institute (TRI) at the University of Pennsylvania that specifically identified more than 300 unique websites offering to sell prescription narcotics like Vicodin and Oxycontin without prescription. A seventh-grader researching a paper for health class might enter the term "Oxycontin" or "Vicodin" in any major search engine and see sites that aggressively market the availability of narcotic painkillers without the required prescription on twothirds or more of the listings provided. TRI verified that these websites actually deliver what they promise and will even replace without cost any shipments that are intercepted.

Prescription narcotics, like Vicodin and Oxycontin, are now widely abused by young people. The most recent national surveys report that in 2006, 9.7% of high school seniors said they had used Vicodin at least once in the past year, compared to 9.3 % in 2003. The even more powerful

narcotic Oxycontin was used by 4.3% of 12th graders and 3.8% of tenth graders. Particularly alarming is the rapid rate of initiation of Oxycontin and Vicodin use among the youngest adolescents. In 2006, 2.6% of eighth graders reported having used Oxycontin in the past year, a 100% increase since 2002 (when only 1.3% reported using the drug). Vicodin use among this group jumped from 2.5% in 2002 to 3% in 2006, an increase of 20%. After tobacco, alcohol and marijuana, Vicodin is now the most widely reported drug abused by 12th graders. By way of contrast, heroin has an annual prevalence rate of less than 1 percent among 12th, 10th, and 8th graders.

Most young people (and their parents) don't realize that these drugs are as addictive as heroin and that they can lead to overdose and even death, particularly when combined with alcohol. (The dangers of these drugs were the basis of last Thursday's multiple convictions of Oxycontin's makers for hiding that the drug is as addictive and produces a high as powerful as heroin. See Appendix D, <http://www.nytimes.com/2007/05/11/business/11drug.html?ex=1179547200&enf09f0937cd2f845a&ei=5070&emc=eta1>) Although there is not yet solid data on the magnitude of internet sales of narcotic drugs without prescription -- and non-internet sources may still be greater -- both DEA and treatment centers report that adolescents are increasingly relying on the internet as a source of supply. Although key government agencies are aware of this growing problem and have undertaken several enforcement operations in the U.S. to try to curtail internet drug traffic, the tragic costs in terms of wasted lives and teen deaths continue to mount.

We believe that familiar law enforcement techniques directed at the sources, transporters, and retail sales networks of drug dealing will prove ineffective to deal with a globalized, internet-based system of sales and distribution of drugs (and also with offers of other contraband including child pornography, gambling opportunities, and illegal weapons). Online stores can be hosted and registered anywhere in the world -- advertising, selling, and delivering products internationally with considerable anonymity and convenience. The sellers and their goods are extremely difficult to identify and locate. Even if these difficulties can be overcome, the countries in which they operate are unlikely to be willing partners in suppressing a trade that may be wholly unregulated in their country. For one of the many countries that, unlike the United States, leaves the sale of narcotic painkillers such as Oxycontin and Vicodin unregulated, there is little incentive to undertake enforcement efforts at the cost of their own sellers, simply to benefit American consumers.

Many of the websites selling such narcotic painkillers as Oxycontin and Vicodin are located abroad and will not be deterred by U.S. threats of increased penalties. They do, however, have one critical vulnerability to U.S. control. To advertise, finance, and deliver these drugs, they must and do rely on the unwitting cooperation of such major legitimate businesses as search engines, internet service providers, and credit card companies. If these legitimate businesses, which do wish to remain within the boundaries of U.S. law, withdraw their assistance -- or advise law enforcement to whom, in this category, their services are being provided - the dealers in internet sales of controlled substances without a prescription will find it far more difficult to continue their businesses. It was for this reason that we decided that a new, unique collaboration between the private and public sectors could make a critical difference. By engaging the support of the

global businesses that unintentionally facilitate cybertraffic in dangerous drugs, we can substantially reduce that traffic and its costs to American teenagers.

For some businesses, such as the providers of financial services, regulatory obligations already require a far greater effort than is often now being made to end facilitation of illegal sales of narcotics. For others, such as internet service providers and search engines, there is no present legal obligation (other than whatever remote dangers there are of being found to be accomplices to the sale). But they express great willingness to cooperate in an effort to end these illegal sales. Both groups claim difficulty in identifying which of their customers are involved in this internet trade in narcotics and both worry about liability if they act to end that trade. If the Congress can solve both those problems - which, we will show, it easily can - then cooperation should be forthcoming. If it is not, and we propose reporting requirements which will promptly reveal any such failure, then the Congress can legislate enforceable regulations.

### Creation of KINS

In January 2005, the Center for International Criminal Justice at Harvard Law School, Drug Strategies, the Treatment Research Institute at the University of Pennsylvania, and the Weill Medical Center at Cornell University formed a core leadership group to develop strategies to "Keep Internet Neighborhoods Safe". Since then, we have held six plenary meetings at Harvard Law School involving more than fifty participants and we have met with government officials and private company executives in Washington, D.C. On July 6-7, 2006, we convened a major conference at Harvard to discuss new strategies to curtail illegal Internet sales of controlled substances to youth by targeting key points of control. (A list of participants is attached as Appendix A.)

Our collaboration has brought together leaders of companies that play key roles in internet commerce. These include Internet Service Providers (ISPs), such as Verizon Online; AOL; AT&T, Earthlink; Microsoft, and Comcast; search engines, such as Google and Yahoo; banks, such as UBS and JP Morgan Chase; credit card companies, such as Mastercard, Visa and Paypal; and private carriers, such as UPS, DHL and Fed Ex. We have also included officials of relevant U.S. government agencies, such as the National Institute of Drug Abuse, the Department of Justice, the Drug Enforcement Administration, Customs and Border Protection, the Department of State, and the U.S. member of the United Nations International Narcotics Control Board. Senior staff members from key Senate and House Committees have also participated. In addition, our collaboration has been informed by academic, legal, and technology experts as well as leaders in public education through the media, such as the Partnership for a Drug Free America.

Based on extensive discussions, we have developed recommendations designed to curtail illegal Internet drug sales by targeting key points in the chain of Internet commerce that begins with a search engine, moves to a web site, and requires drugs to be produced and shipped in response to international financing of sales. Central to the success of these recommendations is the timely sharing of detailed information about the drug-trafficking websites so that their operations can be shut down. While all the participants in the "Keep Internet Neighborhoods Safe" initiative worked toward identifying effective and practical strategies, not all agreed with each of our recommendations.

## How the New Strategy Would Work

Let me summarize what we believe it would take to reduce significantly the use of the internet to sell controlled substances illegally to minors within the United States.

First, we must empower parents to protect their children by giving them the means to keep illegal drug websites off their home computers. We believe that internet service providers (ISP's) should make available to their customers the opportunity to block ads for illegal sales of controlled substances from their internet service. ISPs already offer filtering features that give parents control over what comes into their home computers, and our recommendation would build on these already successful filtering programs.

Second, we believe that the credit card companies, and the financial institutions that sponsor them, should contractually prohibit (and most do now) the use of their financial networks for any illicit purchase or sale of controlled substances. This is an entirely familiar obligation of financial institutions. To be specific, on receipt of information about illicit transactions from independent monitoring groups or from their own internal monitors, the financial institutions would and should be expected to identify the accounts that are being abused, presumably by putting through a "test" order of their own. The drug merchant's bank would be contractually obligated to know its customer and to take steps to penetrate any pseudonyms used by the drug dealer. The dealer's merchant bank would also cut off credit to the offending account and to those behind the account if it is really a front -- furnishing the information it learns about the illegal transaction to other credit card companies and to law enforcement. For example, with that information in hand, the State Department would notify the relevant authorities in whatever foreign state the illegal sale was located, asking for prosecution under applicable treaties.

Third, we believe that efforts to cut off illegal internet sales of controlled substances should be supplemented not only by other forms of law enforcement but, more promisingly, by a nationwide educational campaign, led by government agencies, such as the National Institute on Drug Abuse and the Substance Abuse and Mental Health Services Administration as well as private organizations such as the Partnership for a Drug-Free America. Again, we think a public/private partnership is essential. All these organizations should be taking steps to educate both parents and children on the dangers of using narcotic painkillers without prescription, particularly in combination with alcohol. Part of that education should be information about the firewalls and parental control software that are available from Internet service providers.

The most direct form of warning should take place whenever a teenager asks a search engine (such as Google, Yahoo, or Microsoft) to find one of the controlled substances for sale "without a prescription" or "without questions" or any similar euphemism. The response to any such request should include a prominent banner that reminds the requestor that it is illegal to buy or sell this drug in the United States without a prescription. Search engines, such as Google, are already providing ways for users searching the internet to protect their computers from websites that inject viruses. They could easily extend these efforts to include warnings about websites illegally offering to sell controlled substances.

None of these steps is costly or technologically challenging to the industries now providing their services to illegal dealers of narcotics to children over the internet. Most members of each

industry express an eagerness to help but explain that they don't know how their facilities are being used or by whom. And each expresses a fear of legal liability for terminating a relationship on these grounds. A simple step can eliminate these problems.

Thus, at the center of any comprehensive strategy would be the creation of an independent monitoring group (IMG) or organization that could identify, on a continuing, real-time basis, websites that offer to sell controlled substances without prescription. This small non-profit organization, which we estimate would cost about \$2 million a year to operate, should receive funding through the Office of Justice Programs (OJP) in the Department of Justice. The IMG can be imagined as a group of individuals simply using search engines to identify websites offering to sell controlled substances without valid prescriptions. But because the websites they will identify will usually be fronts linked to other websites, the IMG will need the assistance of readily designable computer programs. The IMG will furnish that information immediately, by the press of a key, to the sizeable number of honest American companies that are now unwittingly facilitating these illegal sales of drugs as well as to relevant government law enforcement agencies.

The IMG will send this information as to offers to make illegal drug sales simultaneously to the financial institutions, such as credit card companies, that finance the illegal sales. The information will also go to the carriers who unknowingly ship controlled substances into the United States and to pharmaceutical companies whose drugs are being advertised without their consent. The former could deny service and provide information helpful to Customs inspectors. The latter would have a strong interest in pursuing those misusing their formulas and brand names.

The IMG will also serve as a clearinghouse, making information from any of the private service providers available to the others. A "safeharbor" for actions reasonably taken on the basis of the findings of the IMG eliminates the fear of liability now inhibiting cooperation. Having thus eliminated the present objections to cooperation of the service providers, the Congress should satisfy itself that promised voluntary cooperation is in fact forthcoming. This can be accomplished by simply directing OJP, through the IMG, to report annually on both the extent of use of these narcotics and the extent of cooperation of the service providers.

The internet service providers and the financing institutions say that they are currently monitoring the internet to detect opportunities to engage in illegal drug transactions. What they find independently would importantly supplement what the IMG finds. This public/private cooperation is the earmark of our proposal, but without the input from the IMG, the American people would lack an adequate assurance of the thoroughness of and disinterestedness (or independence) of their search.

## Conclusion

The structure we propose would not only be effective but would also be broadly accepted by Congress and the American public. In addition, it would create strong incentives for the cooperation of the private sector that is essential to the success of the public/private partnership that we believe is needed. With the continuing attention of Congress to illegal internet sales of controlled substances, we expect that businesses that play key roles in internet commerce would

stop facilitating sales to minors. In particular, we think Treasury regulations relating to money-laundering already impose a legal obligation on the financial institutions to take action against these illegal sales. As to the other e-commerce businesses, we believe that their cooperation is so likely that there is no need for legal directives at this time. However, it is especially important to require annual reporting (as set forth in Appendix B) by the Assistant Attorney General for the Office of Justice Programs to Congress on the progress--or lack of progress-- made by both government agencies and private sector businesses. In the event that companies do not take voluntary steps to help curtail illegal internet drug sales to minors, Congress can impose specific new legal obligations.

Appendix C is a more detailed and carefully described outline of what each member of the public/private partnership would be expected to do and how the pieces would fit together. We believe that this structure can, at minimal cost, substantially reduce the internet availability of narcotic painkillers to minors. Fortunately, this is one of the relatively rare occasions where the results of an initiative will be immediately apparent to the Congress, both through the reporting requirements we suggest to Congress and in the form of the annual surveys which have shown, so alarmingly, the rapid increase in use of prescription painkillers by high school students.

We have attached, as Appendix B, a model piece of legislation that would require warnings of illegality to be attached to any website advertising the sale of controlled substances within the United States without a valid prescription. Granting the Independent Monitoring Group and private companies relief from liability for actions taken on the basis of its findings is all that would be required of the Congress at first.

I will be happy to answer your questions.