

# Internet Governance Forum 2019

## Workshop #92

### Public Health Online: Shadow Regulation-Access to Medicines

ARIA ILYAD AHMAD  
RON ANDRUFF  
MARK W. DATYSGELD  
GABRIEL LEVITT  
OKI OLUFUYE  
TIM SMITH

# Summary

Access to medicines is a fundamental right to health, and an important component of the UN Sustainable Development Goals, most notably SDG 3 (“Ensure healthy lives and promote well-being for all at all ages”). The sale and personal importation of safe and legally manufactured medicines over the Internet represents an important opportunity to create more inclusive and transparent markets that improve access and affordability to life-saving medicines globally.

While significant progress has been made in the regulation of medicines within countries, there remains critical gaps in harmonized cross-border norms, rules and standards relating to Internet pharmacies. In a sequence of pre-event and Workshop sessions, a diverse group of experts engaged the IGF community on this practical case study, entitled “Digital Governance of Public Health: Towards a Regulatory Framework for Internet Pharmacies.”

Discussions from both sessions reflected broader Internet governance challenges around translating rules from the physical to the digital realm. In addition to jurisdictional and digital security considerations, linkages to conversations on DNS Abuse and content regulation affirm the IGF as an appropriate forum to advance these discussions.

As a framework for further inquiry and action within the Internet governance community, all panelists endorsed the Brussels Principles for the Sale of Medicines Over the Internet ([www.brusselsprinciples.org](http://www.brusselsprinciples.org)), which was developed by a multi-stakeholder process at RightsCon 2017 and 2018, based on human rights norms aimed at reducing barriers to medicine access.



# What was discussed

There was broad support among panelists and the audience that consumers should have the ability to purchase and import safe and legally manufactured medicines online. In pursuing a regulatory framework for Internet pharmacies, there was further consensus on a norms-based approach focused on the right to health. Consequently, there was strong support for greater flexibilities within national and international laws that balance access and choice with consumer safety.

Conversely, panelists raised public health concerns with current restrictive enforcement approaches. One scholar on the panel described a “hybrid regulatory regime” whereby private actors are able to shape Internet regulations that disproportionately restrict access to safe and affordable medicines. The discussion paper also captures the assertion of digital privacy experts of “shadow regulation” by Internet intermediaries and the pharmaceutical industry.

The “.pharmacy” gTLD was also identified as a potentially positive instrument, but only if changes are made to its current overly restrictive and industry-influenced management. Another mechanism for Internet intermediaries is the Trusted Notifier program that allows for rapid takedowns which limits the actions of dangerous rogue online markets.

Since appropriate cross-border regulation of Internet pharmacies has been limited, confusion persists on the difference between rogue markets vs. legitimate Internet pharmacies. This has significantly impeded the ability to generate trust, while making the case for credentialing of safe Internet marketplaces, as well as transnational efforts to reconcile jurisdictional limitations. To that end, a broad range of stakeholders agreed that a ‘whitelist’ model can offer more appropriate benefits to balancing access and safety as opposed to ‘blacklist’ approaches.

Finally, there was consensus that in order to develop standards and best practices, there is a need for multi-stakeholder approaches that begins with norms. While this topic currently holds little visibility within the Internet governance community, panelists and members of the audience argued that the debate of health online has a basis in broader human rights questions, while also relating directly to fundamental Internet governance challenges. A need was identified for more cooperation with organizers and the community to generate greater awareness of the issue moving forward.

# Policy recommendations

## United Nations/Internet Governance

Despite a growing interest by community members, the IGF ecosystem has been largely disconnected from debates of health online. Organizers have an opportunity to facilitate dialogue by supporting these discussions at plenary sessions or as a high-interest topic. That would allow the broader community to recognize the sale of medicines over the Internet as a pressing human rights issue that integrates into broader conversations across Internet governance. Increased visibility and engagement from low- and middle-income countries in particular would elevate the normative and forum-setting role of the UN-community, while facilitating multi-stakeholder approaches to address jurisdictional and regulatory issues.

## Technical community

As the Internet governance community moves forward with discussions on DNS Abuse, the time is right to explore strategies to deal with malicious actors such as “rogue pharmacies” that undermine patient safety and consumer choice online. Some of these technical strategies include: (i) Trusted Notifier pilot programs within registries, registrars and hosting providers; (ii) creating whitelist models that facilitate trust and improve access, while restricting the use of blacklists to target criminals; and (c) better defining the role and management of new gTLDs such as “.pharmacy” that can have implications for the Internet as a whole. These technical approaches need to be explored within a multi-stakeholder context in order for human rights norms such as access to health to become viable on the Internet.

## Academic community

Research and policy streams are emerging at the intersection of Internet governance and global health, including the well-received discussion paper presented during the two sessions. Further opportunities include ongoing dialogue on collaborative, evidence-based approaches to translate rules from the physical to the digital realm, while exploring how norms can cascade into standards and best practices. Ensuring multi-stakeholder engagement along with evidence-based research is critical to advance this important subject in the coming years.