

Overview of Internet Gambling

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Introduction

The purpose of this paper is to provide an overview of gambling on the Internet and a context for the testimony on this topic at the National Gambling Impact Study Commission's hearing on May 21, 1998. It is important to recognize that Internet technology develops and changes at a faster rate than traditional industries. Likewise, the political and legal status of Internet gambling activity is evolving on a daily basis throughout the world. In the U.S., some state and federal law enforcement officials are currently litigating several suits in an attempt to halt this activity in their jurisdictions, and Congressional efforts to control Internet gambling appear to be gaining momentum.

For these reasons, this report does not purport to be a comprehensive review of the most recent developments in Internet gambling, but will instead serve as a briefing on this new facet of the gambling industry. It is likely that some of the issues and developments discussed herein will have further advanced even by the time the Commission meets in Chicago.

A New Industry

In just three years, what began as a few web-sites is now an Internet gambling "industry," offering almost every type of gambling and eliciting intense scrutiny from governments and the media. The first Internet gambling web-sites appeared in the summer of 1995.¹ Most offered casino-like games that did not require betting with "real money," but a few were actual online gambling operations providing slow games with simple graphics. In the following two and a half years, remarkable advancements in Internet security and speed made gambling on the Internet more viable and, as a result, the industry has flourished.²

One reason for the industry's rapid growth is the low cost of entry and profit margins that soar with increased volume of players. The necessary equipment and software to develop a site can cost as little as \$135,000, and operating costs are roughly the same whether a company has 50 or 5,000 customers.³

Nearly all types of gambling are now available on the Internet, including horse and dog racing, sports wagering, lotteries, and casino-style games.⁴ Already, the industry has experienced mergers and acquisitions, the development of industry trade

¹ Kevin A. Mercuri, *Interactive Gaming Policy Briefing*, presented at *Internet Gambling: The First International Symposium on Internet Gambling Law & Management* Nov. 11-13, 1997, Washington, D.C.

² National Association of Attorneys General (NAAG), *Gambling on the Internet: One Year Later*, at 3, (June 18, 1997).

³ Don Yager, *All Bets are Off*, *Sports Illustrated*, Jan. 28, 1998, at 83, 90.

⁴ Anthony Cabot, *The Internet Gambling Report*, Trace Publications, 1997 at 13.

associations⁵ and dedicated publications.^{6 7} As of May 1998, there are approximately 90 on-line casinos, 39 lotteries, 8 bingo games, and 53 sports books, as well as additional horse and dog racing-related sites.⁸

Internet gambling companies are generally small operations located primarily in the Caribbean, but they are also located in Central America, South America, Australia, Europe, and elsewhere. The location of a site is often confusing. For example, the Sports InterAction gambling web-site⁹ presents itself as located in the Dominican Republic, but money transfers go to Ireland.¹⁰

Larger and better-financed companies than are currently involved in the industry have announced exploratory efforts in this arena, but the "big players" that operate traditional casinos in the United States have not yet entered the market.¹¹ Although interested in this new gambling industry, traditional casino companies in the United States are reluctant to jeopardize their casino licenses by offering unregulated games.¹²

Estimates of revenue generated by the Internet gambling industry are uncertain. At this nascent stage of the industry's development, no one but the gambling web-site operators knows how much is currently wagered in cyberspace. Predictions for future Internet gambling revenues range from \$1.5 to \$10 billion dollars by the year 2000. These forecasts vary drastically because the legal status of this industry in the U.S. and elsewhere remains uncertain, making the industry's growth somewhat unpredictable.¹³

Future Growth

Internet gambling experts state the industry is in its infancy and that it has enormous potential.¹⁴ The future of Internet gambling will be shaped in part by governments' attempts to regulate or prohibit this activity and the technical and jurisdictional problems in enforcing such policies.¹⁵ Whether or not there is a legal ban on Internet gambling in United States or other countries, however, the industry is likely to continue to evolve where it is either regulated or ignored.

⁵ The Interactive Gaming Council (IGC) <<http://www.igcouncil.org>> and the International Internet Gaming Association represent Internet gaming operators.

⁶ Rolling Good Times Online <<http://www.rgtonline.com>> is an on-line publication for Internet gaming operators.

⁷ *Supra*, note 2 at 5.

⁸ E-mail to Allison Flatt, Associate Director of Research, National Gambling Impact Study Commission, from Sue Schneider, Chair, Interactive Gaming Council, May 5, 1998.

⁹ <<http://www.sportsinteraction.com>>.

¹⁰ Joseph Kelly, *Internet Gaming*, *New Law Journal*, March 27, 1998 at 455.

¹¹ NAAG, *supra*, note at 5.

¹² Chet Barfield, *Legislating Cyberspace: A Net Gamble; Online Wagering Proliferates in Defiance of Laws*, *The San Diego Union-Tribune*, Feb. 28, 1998, at A-1.

¹³ See Yager, *supra*, note 3 at 83; See also Sebastian Sinclair, *Casino Gambling and the Internet*, Christiansen/Cummings Associates, Inc., (visited May 12, 1998)

<http://www.igamingnews.com/articles/static/Casino_Gambling_and_the_Internet.cf>.

¹⁴ See Yager, *supra*, note 3 at 83.

¹⁵ See Cabot, *supra*, note 4 at 1.

Aside from government action, the industry is faced with other significant challenges, many of which are cited by government opponents of the industry who believe they pose significant consumer protection problems. These concerns include: an adequate system for payment; securing the gambling system from attack by computer "hackers;" and overcoming questions about operators' integrity.¹⁶

Methods of Payment

A person wishing to gamble on an Internet web-site must first register with and provide personal information to the web-site operator in order to establish a mechanism for payment, such as a credit card or direct bank transfer. Credit card transfers require that the player use his card to obtain a cash advance and transfer this cash to the casino's account. Some Internet gambling web-sites allow players to create a "front" money account by sending a check or money order to the operator. While gambling, the funds are added to or subtracted from the player's account. At any time, the player can request that a check or money order be mailed to him for amounts remaining in his account.¹⁷

Internet gaming experts see this method of operating an account as an impediment to the growth of the industry. Many consumers are reluctant to provide financial information over the Internet for fear that their credit card or bank account numbers can be stolen by unscrupulous operators or other Internet users and used fraudulently.¹⁸ Furthermore, establishing an account is time consuming, players do not have immediate access to the funds in their account, nor can they retain anonymity. Concerns about the security of financial data on the Internet are not unique to gambling, however, and it is an issue of considerable research and development. Major companies in the financial services, retail, investment and Internet industries are examining how to address consumer concerns and they may overcome these limitations in the near future.¹⁹

One potential solution is stored value mediums, also known as "digital cash," which is currently in development. With these methods, an Internet user would purchase digital cash from a bank or other issuer by bank transfer or credit card. This digital cash would be stored in either a "smart card" or in electronic form on the person's home computer. When the person decides to gamble or buy or sell a product on the Internet, she would pay for it by electronically transferring the digital cash to the host computer. Digital cash would also allow for peer-to-peer payments where neither party is a merchant, such as in an on-line poker game.²⁰

One important feature of digital cash is that it provides for anonymous financial transactions, which may make consumers feel more secure than they would with traditional credit cards. However, law enforcement officials are concerned that it will

¹⁶ *Id.* at 18.

¹⁷ *Id.* at 18-19.

¹⁸ NAAG, *Gambling on the Internet*, at 7, (June 11, 1996) (hereinafter NAAG I).

¹⁹ See Cabot, *supra*, note 4 at 19.

²⁰ *Id.* at 21.

provide opportunities for money laundering and consumer fraud. Increased anonymity would also likely make it more difficult for Internet gambling web-site operators to “screen out” minors, problem gamblers, or gamblers from jurisdictions where such activity is illegal.

Security

Security concerns do not stop with payment issues. Like with traditional casinos, some people will inevitably attempt to steal from both the casinos and the players. If a hacker breaks into an operator’s system, he could cause considerable damage and loss. A hacker might break into the operator’s system and “fix” the games, or intercept the transmission of a home user who lives in a state or country where gambling on the Internet is illegal and “blackmail” him with public exposure or criminal prosecution.²¹

Integrity of Internet Gambling Operators

A major concern among players is whether the games they play are conducted honestly. As with traditional slot machines, Internet games rely on the honesty of the programmers of the software. A software-based random number generator (“RNG”) within the host’s microprocessor controls the “chance” part of the games. Whether this RNG provides random results or is rigged to cheat the players is determined by the software programmers.²²

An unscrupulous operator could defraud a home user even if the games themselves are fair. For example, an operator may not have sufficient funds to pay if the player wins a large jackpot or if many players demand return of their front money accounts at the same time. Another possibility is that a web-site operator may take the money that the player deposits in the casinos and close the site without returning deposits or paying winning wagers.²³

These areas of concern have been solved in traditional casinos by heavy state regulation. Jurisdictions where gambling is legal have state-run laboratories that review and inspect software used in gambling devices. A casino licensee found to have “rigged” a device or failed to pay a debt to a player will likely jeopardize or lose its license to operate. No such uniform reviews or inspections are in place for Internet gambling at this time.²⁴

Pathological Gambling

Specialists in pathological gambling assert that the easy access of the Internet and certain structural characteristics of gambling software products may intensify tendencies toward addiction. Some pathological gambling experts cite the interactivity of the games,

²¹ *Id.* at 23.

²² Anthony Cabot, *The Internet Gambling Report II*, Trace Publications, 1998, at 69.

²³ *Id.* at 70.

²⁴ *Id.* at 69.

which seem to have more appeal to problem gamblers, and the anonymity with which gamblers can navigate through the web-sites, as characteristics that may exacerbate pathological gambling problems.²⁵ The easy access of the gambling with a personal computer may appeal to people who have never before gambled, thereby increasing the number of players, and consequently, the number of pathological gamblers. It will also provide a new medium to persons who have existing gambling problems.

Internet gambling industry representatives maintain that on-line casinos are capable of tracking and screening out pathological gamblers. Electronic funds transfers by credit or wire provide an electronic record, even when the identity of the source is unknown. This would generate data that could be used to identify patterns of compulsive behavior.²⁶ To be effective, operators throughout the world would have to cooperate to share this data, since pathological gamblers would likely play on more than one site. It would also require that operators turn away potentially lucrative customers.

Minors

Most jurisdictions that have legalized gambling restrict participation to adults. For instance, both New Jersey and Nevada prohibit participation of minors and bar them from the casino premises. Any casino licensee or employee of the licensee who allows underage persons to gamble or loiter on the premises is subject to criminal prosecution.²⁷

Unlike traditional casino licensees who have the benefit of making a physical evaluation of their customers and demanding verification when necessary, Internet web-site operators cannot easily determine the age or identity of their players. Developing technologies may someday provide reliable identification of Internet users; currently, however, this information is provided voluntarily, which allows underage persons to access the sites.

Internet gambling web-site operators have an interest in screening out minors in the United States since gambling debts incurred by minors are uncollectable.²⁸ Proponents of Internet gambling contend that the problem of determining the age of players can be overcome by requiring that players provide credit information.

Although an extension of credit usually requires that the prospective debtor be of the age of majority, it is possible for children to use an adult's credit card to place bets on gambling web-sites. Some operators attempt to address this problem by using credit reporting databases to match social security numbers with credit card numbers, or requiring that a player fax copies of birth certificates, drivers licenses, and other

²⁵ Mark Griffiths, Ph.D., *Gambling on the Internet: A Brief Note*, *Journal of Gambling Studies*, Winter 1996 at 471.

²⁶ Interactive Gaming Council, *Q's & A's On Internet Gaming*, (visited April 28, 1998) <<http://www.igcouncil.org>>.

²⁷ See NAAG I, *supra* note 18, at 14, citing N.J. Rev. Stat. §5.12-119; Nev. Rev. Stat. §463.350.

²⁸ *Supra*, note 26.

documentation before processing transactions. There is no standardization of these procedures, however, and they vary from site to site.²⁹

Legal Status of Internet Gambling

Jurisdiction and Enforcement

Jurisdiction is one of the most fundamental concepts of law; a sovereign has power over the people, property and activity within its own borders. The laws that govern jurisdictional issues developed when mountains and oceans created real, concrete barriers of time and distance between states and nations. However, advancements in Internet technology have made interactions across geographic boundaries so quick and easy that "old" concepts of jurisdiction are more defied.³⁰

Under current rules, governments must obtain jurisdiction and physical custody over a person accused of violating the law. When a state attempts to assert jurisdiction over a non-resident, the Constitution requires the non-resident to have "minimum contacts" with the state so that she would reasonably anticipate a lawsuit there. To acquire criminal jurisdiction, a person need not ever be physically present within the state, but must have committed a criminal act that produced a detrimental effect within the state.

Internet gambling has raised the question of whether, if a defendant's only contact with a state is through the Internet, that fact is enough to subject the party to the jurisdiction.³¹ Some argue that a web-site is "passive" -- it simply "sits" on the web waiting to be accessed by customers who make a voluntary effort to access it -- and that this alone is not enough to subject an Internet company to the laws of the jurisdiction where the customer resides. Others argue that maintaining a web-site that can be accessed by residents of a particular jurisdiction is a "minimum contact," and an operator is availing himself of the laws of that jurisdiction by soliciting business from players who reside there.

These arguments turn on the different theories about where Internet activity is actually taking place. For example, some argue that a bettor in Wisconsin would be "traveling" to Antigua if she placed a bet on a web-site operated from there, and that the transactions would occur in Antigua where Internet gambling is legal. Others argue that the transaction takes place where the bettor is located, and that her transactions with the Antigua web-site would subject her to Wisconsin and U.S. law.

Legislative Efforts

²⁹ *Id.*

³⁰ Nelson Rose, Legal Implications of Future Gaming Developments, *Gambling and the Law*, June 3, 1997, at 1-2.

³¹ Dale M. Cendali, James D. Arbogast, Net Use Raises Issues of Jurisdiction, *The National Law Journal*, October 28, 1996.

In the United States, gambling regulation has traditionally been a state, rather than a federal function. Nevertheless, the National Association of Attorneys General have called for a federal response to Internet gambling. They have taken the position that the global accessibility of Internet technology does not allow states to address the different policy considerations – moral attitudes toward gambling, basic issues of game integrity, effective customer dispute resolution procedures, underage gambling, cash controls to hinder money laundering, and efforts to treat problem gamblers – that have resulted in widely disparate legal and regulatory gambling schemes.³² For this reason, Florida Attorney General Robert Butterworth stated that Internet gambling, “must be addressed at the national, if not international level.”³³

In response to the jurisdictional problems associated with enforcing various state gambling laws on Internet activity, the United States Senate is considering a bill introduced by Senator Jon Kyl (R-Az) on March 19, 1997, known as the Internet Gambling Prohibition Act (Kyl Bill).³⁴ The bill would prohibit Internet gambling by amending the 1961 Wire Communications Act (Wire Act), which has become antiquated by developments in Internet commerce.³⁵ The Wire Act is the principal federal gambling law, which is limited with respect to the Internet in that it contemplated the definition of interstate gambling as a telephone call across state lines. The law was designed to allow federal law enforcement officials to prosecute bookies, but it predated the popularization of the Internet by several decades and does not specifically address legal questions arising from the use of the personal computer to make wagers.

Furthermore, the existing Wire Act targets persons “in the business of betting” from using a “wire communication facility,” and does not, therefore, target the casual bettor. It also exempts the transmission of wagering data on horse racing and does not make clear whether a “contest,” as defined by the act, includes non-sports games (such as casino-style games or lotteries).³⁶

The Kyl Bill is a broad-based ban on Internet gambling activity allowing for enforcement through fines, imprisonment, and mandated closings of gambling web-sites. The bill states that persons engaged in the business of betting or wagering who knowingly use a communication facility for betting or gambling may be fined at least \$20,000 or the amount they have received in bets or wagers as a result of engaging in the business, and/or imprisoned for up to four years. A bettor could be fined \$500 or three times what they wagered or lost, whichever is greater, and/or imprisoned for three months. Internet service providers would be required to block gambling sites and would be subject to state and federal authority.³⁷

³² Letter from NAAG to Senator Jon Kyl, (March 20, 1998).

³³ 95 Op. Fla. Att’y. Gen. 70 (Oct. 18, 1995).

³⁴ S. 474, 105th Cong., 2d Sess. (1998).

³⁵ 18 U.S.C. §1084.

³⁶ Adam Snyder, Wagering on the Web is Risky Business, (visited on April 30, 1998)

<<http://www.msnbc.com/news/130414.asp>>.

³⁷ S. 474, 105th Cong., 2d Sess. (1998).

The United States House of Representatives is considering a similar bill, sponsored by Representative Robert Goodlatte (R-Va). In its present form, the legislation makes fewer amendments to the Wire Act and is less restrictive of Internet gaming activity than the Kyl Bill. It allows Internet gambling activity if legalized in the state where the bettor resides and in the state where the operators' server is located. This would allow state governments to legalize Internet gambling and to tax the industry if they so choose.

Both bills raise difficult enforcement issues. Jurisdictional rules require that an individual be physically present in the United States to be prosecuted for violating federal law. Asserting jurisdiction over a foreign company or its officers would be difficult, if not impossible, especially if their physical presence required extradition through an extradition treaty. The most recent version of the Kyl Bill states that the Secretary of State, the Secretary of the Treasury, and the Attorney General of the United States should commence negotiations with foreign countries in order to establish international agreements that would enable the United States to prosecute individuals who are engaging in violations of the prohibition.³⁸ An alternative enforcement method would be to prosecute persons who gamble from the United States. However, this would require the investigation and monitoring of individuals' activities on the Internet, which may implicate privacy issues and elicit opposition from Internet service providers and users.

Supporters of Pending Legislation

Supporters of the Kyl Bill include members of the traditional casino gambling industry, who fear competition for players and the potential for unregulated operators to defraud players and rile anti-gambling sentiment. Also in support of the Kyl Bill is the National Association of Attorneys General; sports league organizations (such as the National College Athletic Association); the National Coalition Against Legalized Gambling; and Gamblers Anonymous.³⁹ These organizations share concerns about consumer protection issues and the potential problems associated with underage and pathological gambling.

Opposition to Pending Legislation

Opponents of the Kyl Bill include a coalition of left and right interest groups who believe the bill is unconstitutional; entrepreneurs that operate gambling web-sites; and Internet service providers who object to provisions that would require them to enforce rules against their web-users.⁴⁰ These opponents argue that the ramifications of a ban on Internet gambling could have far-sweeping, negative implications to a medium that is valuable because of the breadth and diversity of speech that it facilitates.⁴¹

³⁸ Id. at §4.

³⁹ *Supra*, note 36.

⁴⁰ *Supra*, note 10 at 456.

⁴¹ Letter from Internet Consumers Choice Coalition to Senator Orrin Hatch (April 15, 1998).

They argue that the Kyl Bill would set a precedent for eventually subjecting the Internet to a patchwork of state and local laws that would pose a substantial barrier to the development of Internet commerce.⁴² Opponents of the legislation fear that a provision of the bill allowing federal injunctions to force Internet service providers to shut down gambling web sites will be the basis for expanding federal regulatory power of the Internet as a whole.⁴³ They also predict that the notion of allowing the United States to exercise a veto over the content and type of transactions that are allowed on the Internet would implicate the commercial speech freedoms of the First Amendment and that it could be challenged in the courts on that basis.

Internet gambling industry representatives have taken the position that regulation would be a better alternative to prohibition, and that there would be major advantages to operating within a regulated environment. Licensing in the Caribbean and in other small countries has not completely overcome lack of consumer trust in the operators and the games. For that reason, it is felt that regulation of the industry in the United States would add credibility and attract more players. Industry representatives also note that regulation would allow the U.S. to benefit from taxing this industry.

Federal Enforcement Efforts

On March 4, 1998, the United States Department of Justice charged 14 people who own or manage offshore Internet gambling operations offering sports betting. Sports betting is an activity clearly covered by the Wire Act, and the United States Department of Justice contends that the Wire Act applies to this activity because the operators are using interstate phone lines to accept bets. The defendants have denied wrongdoing and will likely contest the charges on jurisdictional grounds since the web-sites named are licensed in Antigua and elsewhere. The Antiguan government may also protest these arrests as an infringement on Antiguan sovereignty.

Despite the problems with the applicability of the Wire Act to Internet gambling activities *other* than sports betting, federal law enforcement officials have not embraced the Kyl bill. "The Department [of Justice] does not agree that federal law should be amended so broadly as to cover the first-time bettor who loses \$5, particularly when Internet gambling is expected to mushroom and federal resources are shrinking," John C. Keeney of the Department of Justice's Criminal Division wrote to the National Association of Attorneys General, after they requested federal intervention.⁴⁴

State Enforcement and Legislative Activity

Although the National Association of Attorneys General has taken the position that the legal status of Internet gambling must be resolved at the federal level, the Minnesota, Missouri and Wisconsin Attorneys General have each taken action against

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Don Yager, *All Bets are Off*, *Sports Illustrated*, Jan. 28, 1998, 83 at 86.

one or more Internet gambling operators based on alleged violations of state public nuisance and consumer protection laws, rather than gambling statutes.⁴⁵

For example, Wisconsin Attorney General James Doyle filed three lawsuits in September 1997 against a number of individuals involved in Internet gambling. On April 22, 1998, General Doyle announced that he reached an agreement that calls for the dissolution of the company's Wisconsin corporation. General Doyle charged that On-Line International, Inc., violated Wisconsin's criminal gambling statutes and that its facility was a public nuisance. The Milwaukee company was dissolved by a United States district court judge and the owners, officers and employees of the parent corporation, World Wide Casinos, Inc., were barred from forming any new Wisconsin corporation for the purpose of operating an Internet gambling web-site.⁴⁶

Some other states, such as Louisiana, have passed legislation prohibiting Internet gambling, while other states' attorneys general have pressured telephone companies not to use telephone wires within their respective states to service Internet gambling operators.⁴⁷ Some states are also targeting bettors. Pending legislation in several states, including California and Connecticut, would make it a crime to use the Internet to participate in forms of gambling that are otherwise illegal in these states.⁴⁸ The New York Senate recently passed a bill requiring offshore gambling companies to register with the state if they intend to do business with New Yorkers and would allow the state to track and prosecute such companies. Opponents of the bill argue that it will be ineffective, since it assumes companies will register, even though the state will not license them, and might prosecute them for violating gambling statutes.⁴⁹

Impact on other Gambling Industries

Early drafts of the Kyl Bill included broad language that could have eliminated the racing industry's hopes for interactive betting and might have been interpreted to prevent simulcasting or even the dissemination by computer of basic racing information. Both the proposed House and Senate Internet gambling bills have undergone considerable redrafting and the current drafts allow simulcasts, posting racing information on the Internet, and intrastate wagering on horse and dog tracks.

Native American Internet Gambling

One particularly gray area of the legal status of Internet gambling involves sites operated by Native Americans. In 1997, the Coeur d'Alene tribe launched the "US Lottery" web-site that is run from their reservation in Idaho.⁵⁰ The reaction of law

⁴⁵ *Supra*, note 10 at 456.

⁴⁶ Office of Wisconsin Attorney General James Doyle, Internet Gambling Firm Ordered Dissolved, News Release (April 22, 1998).

⁴⁷ *Supra*, note 10 at 456.

⁴⁸ *Supra*, note 36.

⁴⁹ Nekesa Mumbi Moody, Senate Bill Would Allow Prosecution of International Internet Gambling Schemes, (visited May 12, 1998) <www.timesunion.com/plugged/gambling.str>.

⁵⁰ <<http://www.uslottery.com>>

enforcement was instantaneous – Missouri Attorney General Nixon immediately filed suit, naming the tribe and the company that operates the web-site as defendants. Subsequently, Federal Courts in Wisconsin and Missouri dismissed the tribe from suit, citing their sovereign immunity.⁵¹

The telephone companies that facilitate Internet connections to Native American operated Internet gambling sites remain in legal limbo, however. The Coeur d'Alene tribal court ruled that state attorneys general are prevented by the 1988 Indian Gaming Regulatory Act from interfering with the US Lottery.⁵² It also held that long distance carriers cannot refuse to provide requested Internet service based on the Wire Act since it is inapplicable to the Coeur d'Alene lottery.⁵³ The National Association of Attorneys General sent notices to AT&T and other long distance carriers, stating that this decision was incorrect. AT&T is now seeking declaratory relief from Idaho federal court.⁵⁴

The National Indian Gambling Commission, the federal regulatory body that supervises Indian gambling, held a hearing on November 14, 1997, on the legality of the lottery but has not decided whether to issue an opinion. All sides are waiting for a decision in *Kiowa Tribe v. Manufacturing Technologies, Inc.*, a United States Supreme Court case, where the issue is tribal sovereign immunity for contractual activity outside tribal lands.⁵⁵ Presently, the Coeur d'Alene tribe continues to operate its lottery and other tribes, including the St. Regis Mohawk tribe in northern New York, are considering similar operations.

International Treatment of Internet Gambling

Governments around the world are taking varying approaches to Internet gambling; some are considering banning the activity; others are considering and/or implementing regulatory regimes; and still others are choosing to enter the market with government-sponsored games.

The European response to the industry is mixed. Some countries are moving toward prohibition, while others are offering gambling licenses, conditioned upon allowing only players from within their jurisdiction to play. Other countries are providing licenses directed at the global market. For example, Liechtenstein, a 62-mile country between Austria and Switzerland, started selling lottery tickets online in August 1995 through a state-sanctioned charitable foundation. The International Federation of Red Cross and Red Crescent Societies became a sponsor for the games and will receive 25 percent of all wagers.⁵⁶ A Red Cross federation official predicted that wagers would

⁵¹ *Wisconsin v. Coeur d'Alene Tribe*, No. 97-C-711-S (D. Wis. Feb. 18, 1998) (order granting Coeur d'Alene Tribe's motion to dismiss on sovereign immunity).

⁵² *Coeur d'Alene v. AT&T*, No. C195-097, (Coeur d'Alene Tribal Court, May 1, 1996), *affd.*, July 3, 1997.

⁵³ *Id.*

⁵⁴ *AT&T v. Coeur d'Alene Tribe*, No. Civ 97-0392, (D. Idaho filed Aug. 22, 1997).

⁵⁵ Cert. granted June 1997, 117 S. Ct. 2506.

⁵⁶ Barton Crockett, *Risky Bottom Line for Cyber Casinos*, (visited on April 30, 1998) <<http://www.msnbc.com/news/103427.asp>>; See also Letter from Jan Lane, Acting Director, American

reach \$3.4 million a week by the spring of 1998, and give the federation a valuable new source of revenue.

One Australian state recently resolved to implement a regulatory regime based on a national model for cooperation between states, and others are likely to follow. In May 1996, Ministers from each state agreed to draft a regulatory regime that could be used as a model for state governments. In May 1997, the Ministers endorsed the release of the "Draft National Regulatory Model for Interactive Home Gambling Products" and, later that year, Victoria's Gaming Minister formally announced his endorsement of the cooperative approach proposed in the regulatory model. In March 1998, the Queensland Treasurer introduced into State Parliament the "Interactive Gaming (Player Protection) Bill" based on the regulatory model.

The Bill passed in Queensland on March 19, 1998 and it will be used as guide by other Australian states and territories that want to join the cooperative scheme proposed in the model.⁵⁷ New South Wales and Victoria are likely to pass similar bills this year, and the regulations are expected to be in effect by 1999. Two Australian "territories," Norfolk Island and The Northern Territory (each have state-like powers), recently enacted legislation to license interactive gaming operators, but have elected not to be part of the cooperative model.

The regulations allow unlimited state licensing subject to the applicants proving integrity, suitability, and solvency. The regulations would prohibit minors from playing and the extension of credit to players. They require that operators allow problem gamblers to exclude themselves and provide protections for the privacy of the players. There is also a mandate for disclosure of slot machine payouts, complaint procedures and audits, as well the licensing of all directors, CEOs, and those with a 5 percent interest in the company. Each state or territory in Australia must also establish dispute resolution mechanisms.

One of the most significant provisions is the tax regulation; if the gambler lives in a jurisdiction where gambling on the Internet is legal, she is taxed in that jurisdiction. If the player is from a jurisdiction where gambling on the Internet is *illegal*, the tax will be retained by the jurisdiction in which the service provider is located. Australian Internet gambling providers will not be required to enforce prohibitions on players participating from overseas jurisdictions that are actively trying to prohibit their residents from gambling. The taking of bets from the residents of a foreign country that prohibits Internet gambling will not be considered as grounds for action under Australian law against an Australian operator's license.⁵⁸

Red Cross to Joseph M. Kelly (May 12, 1998). The American Red Cross decided not to receive any funds from PLUSLotto, Millenium Draw, or other Internet lotteries, stating that, "...they are not consistent with our traditional broad-based fund-raising appeals."

⁵⁷ Brian Farrell, *The View from Australia*, presented at *The 6th Annual Australian Casinos and Gaming Conference* (March 31, 1998), Sydney, Australia.

⁵⁸ *Id.* at 8.

New Zealand is considering regulating Internet gambling. Other small countries, such as Antigua, are openly providing Internet gambling licenses to attract investment. For most of these, obtaining a license involves a one time fee and no further regulatory action. In many countries, particularly where personal computers are few and modems are rare, the government is ignoring this issue.⁵⁹

Conclusion

Internet gambling is a thriving industry that has operated without governmental regulation since it began three years ago. This activity has become one of the first to bring forth and challenge the complex jurisdictional and constitutional issues associated with the global reach of the Internet, as well as consumer protection concerns about Internet commerce.

The question of whether to regulate or prohibit Internet gambling in the U.S. is likely to be resolved in the near future. This legislation will have far-reaching implications to the Internet as a whole and will set a precedent for attempting to control activity on the Internet.

Even if gambling on the Internet is prohibited in the U.S. by the enactment of pending legislation, it will likely continue to grow in regulated locations such as Australia. Due to the international reach of the Internet, gambling web-sites are likely to remain accessible to U.S. citizens, making enforcement of proposed prohibitions against offshore companies and their officers very difficult. For these reasons, Internet gambling will likely remain a viable and controversial branch of the gambling industry for some time to come.

⁵⁹ *Id.* at 5.