

Internet Gambling: Prohibition or Regulation?

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Before the National Gambling Impact Study Commission

May 21, 1998
Chicago, Illinois

In the United States, Internet gambling is illegal. My discussion of the topic starts from this point. It is a crime to utilize wire communications facilities to transmit bets or wagers in interstate or international commerce. With that statement made, I can proceed to today's topic: The Implications of Prohibition v. Regulation.

Should U.S. policymakers choose to legalize and regulate gambling on the Internet?

The Internet has taken the gambling world by storm. One of the most heavily regulated industries in the world has crashed with full force into the one of most unregulated, and inherently unregulatable, phenomena of modern times. Regulation in the gambling industry has certain important parameters that cannot be addressed on the Internet. The very qualities that make the Internet the powerful force that it is go against the grain of that which is necessary for effective gambling regulation. While there are a lot of parties attempting to solve some of the Internet's inherent problems in the context of Internet commerce, none of these solutions are yet uniformly available across the Internet. Integrating all the necessary components into one seamless set of applications available to the average consumer in the United States is years away from reality.

Until such time as gambling on the Internet can be fairly and effectively regulated, if that time ever comes, our public policy should prohibit it. A public stance of prohibition tells consumers that they should be extremely wary. A regulatory system that is ineffective, but is endorsed by government, only gives a false sense of security to participants. Players might tend to believe that the games are fair, are offered by a known and trusted party, that there is recourse in the event of problems, and that their children and problem gamblers will be kept out. No regulatory structure currently envisioned, in conjunction with available technology, could assure this to be the case, and our government should not be a part of such a charade.

The people who would be harmed by an ineffective attempt to regulate Internet gambling would be those very people who would trust the ability of the regulators to do their jobs. The Internet simply won't allow effective regulation to take place. The Internet was designed to allow our nation's, and the world's, computers to communicate with each other in the event of a nuclear war or other disaster. A few government bureaucrats

trying to regulate Internet gambling certainly aren't going to be able to stop the ingenious workarounds built into the core of that system.

Why do we regulate gambling, and what do we look for in that regulation?

Gambling regulation is, first and foremost, a form of consumer protection. It also serves various other law enforcement purposes, such as preventing theft and money laundering. Confirming identities of the players and operators, providing certainty surrounding the manner in which the games are conducted, accountability for all financial transactions and fair dispute resolution procedures are of paramount importance for the effective regulation of gambling. If it were regulating an activity like Internet gambling, it would be important for the government take an active role in all of these matters (and more) because of the relatively unequal bargaining positions of the participants.

Individual players of gambling games, if pure market forces were allowed to control, would have relatively weak bargaining positions compared to the well-financed and security-cloaked gambling operators who ask consumers to part with their cash. The operator would perhaps promise a fair game in return, but the game would always be tilted in the favor of the house. Remember that the opulence of Las Vegas' Strip was not built with the money of winners.

Another important point here is that gambling operators themselves want to be regulated. Those proposing a regulatory system for this industry will quite honestly tell you that they need regulation to make their businesses successful. A government "stamp of approval" provides instant credibility and the ability to go ahead with the business of making money. Regulation is, in essence, a regulatory body vouching for the credibility and fairness of the enterprise. This is a fairly large obligation in this, the Age of the Internet.

A few comments regarding some specific regulatory issues in gambling on the Internet:

Licensing of operators: One of the most important functions of a gambling regulatory agency is the ability to perform thorough background investigations of the operators of a commercial gambling business. Background investigation reveals past history and associations, which can be a crucial indicator of future performance. Just like in the "real world", a government which regulates Internet gambling could investigate and license operators. However, there is currently no uniform system worldwide for consumers at the "other end" to be assured that a government's seal of approval on a website is really what it purports to be, or that the operator themselves are who they purport to be. With the use of dynamic Internet addressing, and especially in light of the upcoming liberalization of the domain name registration system, it will be increasingly difficult to identify website operators with any absolute certainty.

Integrity of games: Also as in non-Internet contexts, gambling regulatory agencies could test game algorithms, the computer code which makes the game run, and attempt to verify that the games are fair and honest. However, online games are constantly

changing and being updated, and there is again no uniformly-accepted system for players to be able to assure that the game code they are playing is the same as that verified by the regulatory agency. Current technologies which claim to do this are really not as trustworthy as they purport to be, leaving players, once again, on their own, against an unequal adversary.

Monetary Controls: An important function of regulatory agencies is monetary control. An anonymous cash-based business such as gambling sees huge amounts of money coming from players, floating through the various games and tables, and going into the pockets of the operators. Internet gambling will be no different. The mainstream gambling market will be leery of traceable financial transactions, and many gambling operators will seek to return to an anonymous cash-based system by using some forms of digital currency. This type of anonymous cash flow is ripe for abuse by money launderers and plain old thieves. Players might easily be shortchanged, tax obligations might be avoided, large prize payouts avoided by unscrupulous operators, or operators might simply disappear from cyberspace without a trace, but with all of a player's accumulated winnings. Operators themselves might become the victims, with offshore subcontractors playing an increasingly important role in this already-developing industry.

Age Verification: Much is made of the ability of underage players to participate in Internet gambling without the knowledge or approval of their parents or guardians. While there are systems that could be designed allowing in-person verification of players' ages prior to their registration at a gambling website, these are by no means foolproof. This comes at the same time as we hear that younger persons are increasingly attracted to gambling activities. The use of the Internet's multimedia capabilities might prove to be much more attractive to children raised on video games than a meeting with the local bookie in a dark alley.

Problem Gambling: With powerful computers giving an individual online gambling site an increasingly accurate ability to track individual players' activities and identify patterns indicative of gambling problems, some say that online gambling is the ultimate tool to weed out problem gamblers. In practice, however, this will not go far toward addressing the concerns on this issue. "Real world" gamblers with addictive behaviors must physically travel (even if only down the road) to feed their habit, and when identified as a problem gambler must then physically travel to a new location. Online gamblers will not have this built-in moderation mechanism. Once identified as a problem gambler, even if they are removed from one cybercasino, they are only a couple of mouse clicks away from the next casino, and the next one, and the next one after that. The distributed nature of an industry like Internet gambling feeds many of the precise behaviors that get problem gamblers into trouble. The anonymity so pervasive on the Internet would also be a handy shield for problem gamblers to hide behind.

Dispute Resolution: A key assurance that regulators can provide to consumers is the ability to have any disputes over games effectively and swiftly resolved. Because this is available, regulated operators tend to work fairly and efficiently at avoiding disputes before they arise. However, a consumer in the U.S. may not have that kind of assurance

when gambling with an Internet gambling site at some offshore location. A trip to Antigua to file a complaint is not cost-effective for a \$100 dispute, or even a \$1,000 dispute. Without such mechanisms, operators will not have the same incentive to pursue consumer interests.

Location, Location, Location

Much like the famous phrase used by Real estate brokers, location is everything in the gambling world. A good location makes a successful casino, and a bad location does not do much. The experiences of the various tribes involved in Indian gambling show this. On the Internet, every operator has (essentially) the same prime location. Borders and physical location make much less difference. The key from governments' standpoint, however, is that players are not simply located in one discreet location, which can be effectively monitored and regulated. The Internet makes no distinctions regarding physical location.

While Internet gambling operators have made some progress in taking steps to identify the home residence of a player through credit records or other non-Internet based tools, there is currently no technology which can readily identify actual physical location of players. A resident of Queensland or Victoria in Australia might have all of the correct residential qualifications on paper, but their place of residence doesn't give them *carte blanche* to violate the laws of the jurisdictions into which they travel. When in Illinois, it is universally accepted that they are subject to Illinois law. Their place of residence makes little difference. Online gambling operators have no way of knowing where their customers are physically located at any particular time, and thus no way of assuring that they are not providing their players with the tools to offend the laws wherever the players may be located.

The key concept to be drawn from this discussion of location is actually the concept of jurisdiction. Our constitutional jurisprudence recognizes that activities in one location that have a significant effect in another jurisdiction can be dealt with in the other jurisdiction. Even without physical presence in the "foreign" jurisdiction, the knowledge that a particular activity is having a significant effect there can be enough to provide legal jurisdiction under our constitutional concept of due process.

Due process is based on the concept of fundamental fairness. Is it really fair to be hauled into that foreign place? The answer can be yes when there is a clear understanding that an activity is affecting that other place. If a person "purposely avails" themselves of the opportunity to do business with that place, it is only fair that they be held to answer to the laws of that place.

What will prohibition do?

Just as there is no way of assuring an effective regulatory system for Internet gambling, it must also be admitted that there would likely be no 100% effective method of prohibiting gambling on the Internet. There are too many redundancies and workarounds built into

the Internet to feel that such a policy can promise to be 100% effective. This reality, however, does not mean that a law expressing a policy of prohibiting gambling on the Internet is inappropriate.

In fact, a policy of prohibiting gambling on the Internet would send the clear message that the government does not believe this is an appropriate business use of the Internet, and persons who participate in spite of any prohibition do so at their own risk. It may be a sad fact of life, but in our highly-regulated world today, there is often a perception among members of the public that anything not specifically prohibited by the government must be good and acceptable. I know this from talking to members of the public on an ongoing basis regarding all manner of public inquiries that come to a state attorney general's office. A public perception of tacit approval would be far from the truth, and potentially harmful to our citizens.

Another World?

The Internet is not another world. It is not some new country with its own sovereign rights. It is nothing more than a highly efficient means of transmitting data seamlessly between the real places we experience every day with our own physical senses. "Cyberspace" is nothing more than a handy term used to visualize this abstract concept. We should not encourage activity in Cyberspace that we would not permit in the "real" world. Unregulated, unregulatable gambling is one of those activities we should not stand for.