

**TESTIMONY OF FRANK MILLER, ESQ.
BEFORE THE NATIONAL GAMBLING IMPACT STUDY COMMISSION
CHICAGO FIELD HEARING
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Madame Chair, members of the Commission, afternoon. My name is Frank Miller, and I am pleased to be able to testify before the National Gambling Impact Study Commission to discuss Internet gambling from the perspective of regulation and enforcement.

My Background

I believe I am particularly well suited to speak to this issue given my previous professional experience. Prior to joining the private sector in 1997, I was the director of the Washington State Gambling Commission, a position I held for six years. As you may know, Washington State has one of the largest gambling enforcement commissions in the country. In my capacity as the chief gambling regulator for the state, I was responsible for overseeing the day to day regulation of charitable, commercial, Class III tribal gaming operations, and special investigations involving criminal gambling activity. I was also past president and a board member of the North American Gaming Regulators Association (NAGRA) in 1994 and 1995. In addition, I established the funding for and serve on the board of directors of the Washington State Council on Problem Gaming, a non-profit organization that works with compulsive gamblers.

Drawbacks of Prohibition

Madame Chair, I was requested by the commission staff to examine enforcement obstacles associated with the regulation or prohibition of gambling on the Internet. I base my views on the belief that any gambling policy should be the protection of the public's health, safety and welfare. Within that policy, consumer protection and the mitigation of social impacts, including problem gambling and underage participation should be of paramount importance. I am particularly concerned that the approach many

would like to take to address the issues of compulsive gambling and underage participation – prohibition – will simply not work. Some internet gaming is prohibited today, and yet is proliferating. While I am not an internet expert, those who do understand “packet-switched data networks,” “URLs” and “hot-links,” state with certainty that a unilateral prohibition on internet gambling will have little or no effect on keeping Americans from accessing gaming sites. It is simply too easy and too accessible. There are no intimidating third party transactions necessary to activate participation (i.e., black market, bookmaking). With that in mind, it is clear that mere legislation will not stand in the way of the World Wide Web. A new legislative prohibition will simply create a black market, located, for the most part, outside U.S. jurisdiction and remove the ability of the government to set effective policy regarding Internet gaming.

I believe that not only will a prohibition fail, it could actually increase exposure to online casinos by minors and compulsive gamblers by forcing regulatory minded law-abiding operators out of business. Only those companies who are predisposed to breaking the law will be left to fill the vacuum in a market place that demands such services and from a practical standpoint, those entities will be beyond the reach of the Justice Department.

This will create a scenario similar to the 1920's era of alcohol prohibition. During prohibition, there was no reason for bootleggers to ensure that someone who bought alcohol was of age, since the sale of alcohol in itself, was a crime. Likewise on the Internet, there will be no reason to screen out minors or compulsive gamblers from gaming activities – activities that notwithstanding the efforts of some will be available to the general public anyway. Despite the good intentions of those in the prohibition camp, increased exposure to gaming by these vulnerable constituencies is not a desirable outcome. Thus, prohibition will not adequately protect the public's health, safety and welfare.

Enforcement of Regulation

The \$64,000 question is how to establish a strict, rigorous regulatory regime – one that will maintain a high level of compliance – in an environment where an internet address can be changed with just a few keystrokes. I believe the answer to that question can be found by taking a balanced, market-oriented approach to regulation.

The casino industries in Nevada and New Jersey, as well as American consumers have benefited from regulation. The same dynamic will apply equally to casinos in cyberspace, since strict regulation will provide a more stable market for online wagering. The key to enforcing a regulatory scheme in cyberspace, however, requires that the benefits of regulation as a whole outweigh the burdens imposed. As a result, the only market that will survive will be the regulated market. A policy that requires the highest level of integrity, combined with a strong enforcement mechanism is the best way to ensure that games are fair, minors and compulsive gamblers are excluded, and taxes are paid.

Now, one might ask how it is possible to fashion an enforcement mechanism in an environment where prohibition will not work. The answer is, prohibition promotes unlawful activity, and regulation removes it. Consumers when given a choice will ultimately participate in a regulated environment when it competes with an unregulated one.

Consumers would easily identify sites are licensed, regulated and controlled by a governmental entity. Like any regulated industry, those that refuse to comply with the licensing and regulatory requirements would be subject to closure. Although rogue companies will exist, their markets will shrink and the costs of relocating to new web addresses to avoid regulation will function as the ultimate market-driven enforcement mechanism. These sites, saddled with increased operating costs, will not be able to compete with those who are willing to submit to and comply with regulation. Moreover, I believe the power of information – whether from a single source such as a list of approved sites, by word of mouth, or via a

visible certification or seal of compliance – will help consumers make the correct decisions to avoid unscrupulous operators who fail to submit to regulation.

U.S. Regulation

If, as I believe, regulation is appropriate and necessary, the question then becomes what jurisdiction should have primary responsibility for controlling online gaming: the federal government or the states.

Gaming has traditionally been viewed as a state issue. The decision as to whether gaming should be allowed, and if so, to what extent, is primarily left to the governors and state legislators. However, the Internet, almost by definition, is a creature of interstate commerce, and thus raises federal concerns. While regulation strictly on a state-by-state basis would be preferable in an ideal world, I believe that a federal/state partnership needs to be formed, with both playing a significant role in the regulation of Internet gaming.

What I would propose is that the federal government be tasked with licensing and establishing basic consumer protection requirements and “character and fitness” standards for all operators. A single national standard as to types of Internet games would also be required.¹ These responsibilities could be placed on the Federal Trade Commission, the Department of Commerce, the Department of Justice, or some combination of the three. Funding would come from license and regulatory fees.

If a state chose to participate in such a partnership, it would be tasked with identifying illegal activities that occur within their borders (based on the national standards), auditing fairness of games,² and issuing

¹ I recognize that this is a controversial proposition. However, unlike land-based casinos, it is difficult, if not impossible to parse the types of Internet games permitted by the jurisdictions in which they are offered. Outside of an Internet exception, I continue to believe that states should decide which games, if any should be offered at land-based casinos.

² I would note for the record that Internet games, like video poker machines that are in use in major gaming establishments, provide an accessible audit trail as well as mechanisms to validate the integrity of operations.

guidance for and be responsible for the collection of taxes. Violations of national standards that are uncovered by state authorities would be turned over to federal officials, who would assess penalties ranging from reprimands and fines to the closing down of specific gaming sites.

For those who would question this approach and argue that it's not possible to regulate Internet gaming, it has already begun. I encourage you to examine the new Internet gaming legislation from Queensland, Australia. It is a comprehensive program.

Tribal Gaming

From a regulatory perspective, tribal internet gaming is an easier issue to deal with than private sector operations. Tribal gaming is already governed by Federal law. Tribal Internet gaming would be subject to a Tribal/State Compact and ultimately be regulated by Federal, Tribal and State officials. The challenge will be the interplay between Tribal and non-Tribal gaming interests as it relates to Internet gaming.

Conclusion

Because the Internet knows no geographical boundaries, it poses a great challenge to regulators. It can and in my view must be regulated or controlled. We must embark on a proactive approach to effectively regulate this 21st century technology. To do otherwise, we risk not merely the continued growth of Internet gaming, but the ability to effectively shape global policy and the ability to protect our most vulnerable citizens.

Madame Chair, that is the extent of my prepared remarks. I look forward to answering any questions you or other members of the Commission may have.