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ALAN KESNER

MR. KESNER: Thank you very much, Madam Chairman and Commissioners. My name is Alan Kesner. I'm an Assistant Attorney General with the Wisconsin Attorney General's office, and the Chair of the staff working group with the staff subcommittee on Internet gambling of the National Association of Attorneys General. I've been involved in studying this issue for about three years, since the summer of 1995, when we first formed our staff working group at the National Association of Attorneys General.

Attorney General Doyle of Wisconsin expresses his regrets for not being able to be here himself. He has his own conference hosting a number of law enforcement officials today in Wisconsin.

The Internet is a very difficult issue, as my written testimony will say. The Internet has taken the gambling world by storm. Gambling itself is one of the most heavily regulated industries we know in the world. Of course, as Allison has previously described, the Internet is almost unregulated and perhaps unregulatable, so we've got a clash of cultures here. Regulation in the gambling industry has a lot of important parameters that can't be addressed in the Internet context. In fact, the very qualities that make the Internet the powerful force that it is today are those which go directly against the ability to regulate and effectively control what happens on the Internet.

There are a lot of people trying to solve the Internet's shortcomings in the context of Internet commerce and

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1 electronic commerce, but none of these solutions are yet
2 uniformly available across the Internet. Integrating all these
3 necessary components into one set of seamless applications which
4 is available to average consumers in the United States is years
5 away from reality at this point.

6 Until the time comes that gambling on the Internet
7 can be fairly and effectively regulated, if that ever comes, our
8 public policy should be to prohibit Internet gambling. A public
9 stance of prohibition tells consumers that they have to be
10 extremely wary of what they're dealing with.

11 The regulatory system that might be put in place on
12 the Internet, that by its very nature would be an ineffective
13 regulatory system, but which would be endorsed by the government
14 would only give a false sense of security to participants.
15 Players would tend believe that the games are fair, are offered
16 by known and trusted parties, there's recourse in the event of
17 disputes and that children and problem gamblers should be kept
18 out. But no regulatory structure currently envisioned in
19 conjunction with currently available technology will assure this
20 to be the case. Our government should not be part of such a
21 charade.

22 By the way, I'm using terms that aren't familiar. I
23 know Internet is a new issue to all of us. Please feel free, if
24 you want to interrupt me, I'll welcome you, although I'll take
25 questions later as well.

26 People who would be harmed by an ineffective attempt
27 to regulate Internet gambling are those very people who would
28 trust the ability of regulators to do their jobs. The Internet
29 simply won't allow effective regulation to take place. The

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1 Internet was designed, if you'll recall, to allow our nation's
2 and even the world's computer, to communicate with each other in
3 the event of a nuclear war or some other disaster. A few
4 government bureaucrats trying to regulate Internet gambling
5 certainly aren't going to be able to stop the ingenious work-
6 arounds that are built into the core of the Internet system
7 itself.

8 Gambling regulation is first and foremost a form of
9 consumer protection. It also serves a number of other law
10 enforcement purposes, such as the prevention of theft and money
11 laundering. Issues such as the ability to confirm the identity
12 of players and operators, providing certainly surrounding the
13 manner in which the games are conducted themselves,
14 accountability for financial transactions by both the consumers
15 and the operators, as well as fair dispute resolution procedures
16 are of paramount importance for the effective regulation of
17 gambling.

18 If it were regulating an activity like Internet
19 gambling, it would be important for the government to take a role
20 in all these manners and many more because of the relatively
21 unequal bargaining positions of the participants. Individual
22 players of gambling games, if pure market forces were allowed to
23 control, would have a relatively weak bargaining position
24 compared to the well financed and security cloaked gambling
25 operators who would ask the consumers to part with their cash.

26 The operator might perhaps promise a fair game in
27 return, but we have to remember the game would always be tilted
28 in favor of the house and we've heard before that the opulence of
29 Las Vegas' strip was not built on the money of winners.

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1 Another important point here is that the gambling
2 operators themselves would want to be regulated. They see that
3 proposing a regulatory system for their industry will tell you
4 that they need regulation to make their business successful. The
5 government stamp of approval would provide instant credibility
6 and the ability to go ahead with the business of making money.
7 Regulation is, in essence, a regulatory body vouching for the
8 credibility and fairness of the enterprise. That is a fairly
9 large obligation in this, the age of the Internet.

10 I want to make a few comments regarding some of the
11 specific regulatory issues in gambling in general and how it
12 might apply to the Internet.

13 The licensing of operators is one of the most
14 important functions of a gambling regulatory agency. Through
15 background investigations of the operators of commercial
16 businesses, we can see past histories of associations which are
17 often a crucial indicator of future performance. Just like in
18 the real world, a government which regulates Internet gambling
19 could perhaps investigate and license its operators; however,
20 there's no uniform system currently available which consumers at
21 the other end could be assured that a government's seal of
22 approval on a website is really what it purports to be or that
23 the operators themselves are what they purport to be.

24 With the use of dynamic Internet addressing and some
25 of the currently anticipated changes of the Internet, this is
26 going to be even more difficult than it is currently to identify
27 website operators with absolute certainty.

28 Also as in other non-Internet context, gambling
29 regulatory agencies could test game algorithms which is the code

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1 which runs a game on a computer and attempt to verify that those
2 games are fair and honest. However, online games are constantly
3 changing and being updated. They don't have the same static form
4 of game that an electronic gambling machine has. There again is
5 not a uniformly accepted system for players to be able to assure
6 that the game code they are playing is the same game code that
7 was approved by regulators, if indeed it ever was approved.

8 Once again, players are going to be on their own
9 against an unequal adversary.

10 Another important function of regulatory agencies is
11 monetary control. An anonymous cash base industry such as the
12 gambling industry sees huge amounts of money coming from players,
13 flowing through the various games and tables and going into the
14 pockets of the operators. Internet gambling will be no
15 different. The mainstream gambling market at this point uses
16 credit and other types of traceable financial transactions that
17 do offer some assurances; however, with the advent of terms such
18 as digital cash and electronic money, it can basically turn into
19 an anonymous cash-like based economy on the Internet and we will
20 see much more push because of the relative desire for anonymity
21 among players and operators themselves.

22 In fact, players might easily be shortchanged, tax
23 obligations could be avoided, large prize payouts could be
24 avoided by unscrupulous operators who might, as previously
25 stated, disappear from the web overnight. And all the victims'
26 accumulated winnings of course, would go with that operator.

27 Operators themselves might even be the victims
28 because off shore subcontractors are playing an increasingly

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1 important and vital role in this industry itself which is
2 developing quite rapidly.

3 Age verification is another issue. Much has been
4 made recently of the ability of underage players to participate
5 in Internet gambling without the knowledge or approval of their
6 parents or guardians. While there are systems that might be able
7 to be designed allowing some in person verification of players'
8 ages prior to their registration on the gambling website, none of
9 these systems are foolproof and none them have been proven yet to
10 work 100 percent. This comes at the same time as we hear, as the
11 previous panelists have said, that younger persons are
12 increasingly attracted to gambling activities. And it's
13 important to note here that the use of the Internet and its
14 flashy multimedia capabilities is probably going to be much more
15 attractive to children raised on video games and television than
16 a meeting with a local bookie in a bar or a trip to some far off
17 location.

18 Problem gambling is another issue that will have to
19 be addressed in the Internet context. With powerful computers
20 giving an individual online gambling site an increasingly
21 accurate ability perhaps to track individual players, some say
22 that online gambling might be the ultimate tool to weed out
23 problem gambling. However, this technology won't go that far
24 toward addressing the real issue here.

25 "Real world" gamblers -- I use the term "real world"
26 in quotes -- who have addictive behaviors like that, have real
27 world physical limitations. There are distances to travel
28 between different casinos. If they do have a problem and are
29 identified and perhaps stopped, they must at a minimum travel

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1 some place else to go to another casino, another gambling
2 operation. In that time family and friends and other people who
3 might have some concern have the ability to stop them from
4 getting on that plane to Las Vegas or whatever might be the case.

5 On the Internet this isn't the case. If one gambling
6 website would identify somebody as a problem gambler and even if
7 it did take action, it would take nothing more than a couple of
8 clicks of a mouse to transfer yourself to another casino after
9 you're off of there. There are over 100 casinos and more coming
10 online every day. So you can go directly from one addictive
11 location to another, to another and another.

12 Another assurance that regulators in off-line
13 gambling, in real world gambling, can provide to consumers is the
14 ability to have dispute resolution, an effective and swift
15 resolution of disputes.

16 I have a couple of other issues that I wanted to
17 discuss in my testimony but I see my time has expired. So I've
18 got the written testimony there. I do want to talk about
19 jurisdiction and I volunteer myself again for any questions the
20 Commissioners might have.

21 CHAIRMAN JAMES: Thank you very much, Mr. Kesner.

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