



September 3, 2003

Backgrounder

**Illegal Internet Gambling:
Problems and Solutions**

Executive Summary

- Illegal Internet gambling is growing exponentially: Internet gambling sites have increased from 35 in 1997 to roughly 1,800 today.
- States are finding it increasingly difficult to enforce their laws against it because of the interstate nature of the Internet; and enforcement of U.S. law has been difficult because most illegal sites now operate offshore.
- Internet gambling is linked to organized crime and is rife with fraud. More than that, it threatens the integrity of amateur and professional sports, and is more dangerous and addictive than regulated gambling, especially for young people who can build up thousands of dollars in debt on their parents' credit cards.
- To address this growing problem, State Attorneys General, the National Gambling Impact Study Commission, and others have urged Congress to enact legislation to provide state and federal authorities with greater means to enforce statutes on illegal Internet gambling.
- On July 31, by a vote of 19-0, the Senate Banking, Housing, and Urban Affairs Committee ordered reported S. 627, designed to aid in the prosecution of illegal Internet gambling. This bill, The Unlawful Internet Gambling Funding Prohibition Act, is similar to H.R. 2143, which passed the House of Representatives on June 10, 2003, by a vote of 319-104. It would require the Secretary of the Treasury to promulgate regulations prohibiting banks and other financial institutions from processing transactions of illegal Internet gambling.

Introduction

With almost universal access to computers and technological advancements in Internet connections, the Internet has made illegal gambling accessible to millions of Americans. And it has vastly changed the way in which many Americans gamble because it promotes private, immediate, individual, 24-hour access to a full range of gambling in every home or college residence.

According to the National Gambling Impact Study Commission's final report, issued in 1999,¹ Internet gambling had grown exponentially in the past several years as a result of technological advances and strong demand. The Commission reported that Internet gambling more than doubled from 1997 to 1998, both in terms of the number of gamblers and revenues. In 1998, the Commission could count only about 50 gambling sites, while a Bear Stearns report of September, 2002 found about 1,800 Internet gambling sites, and estimated that the online gambling industry had, to that point, generated some \$10 billion in revenues since the first gambling site came online in 1995.² There is no reason to anticipate the industry isn't continuing to grow. A study recently cited by *USA Today* estimates that global Internet gambling revenues will grow from \$2.2 billion in 2000 to \$12.6 billion in 2006.³

Current Law is Inadequate to Deter Illegal Internet Gambling

While current laws at both the federal and state level prohibit Internet gambling, these laws have been ineffective because the perpetrators' operations are almost exclusively offshore and beyond the reach of state and federal law enforcement.

Gambling is primarily a matter of state law, reinforced by federal law in instances where the presence of an interstate or foreign element might otherwise frustrate the enforcement policies of state law. The most relevant U.S. federal criminal law is known as the Federal Wire Act, 18 U.S.C. 1084, which makes it illegal to use the telephone or telecommunications to conduct an illegal gambling business.

Generally speaking, the Federal Wire Act outlaws the use of interstate telephone facilities by those in the gambling business to transmit gambling-related information. The Act applies to anyone who, "being engaged in the business of betting or wagering, knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers

¹ In 1996, Congress passed PL 104-169, which created the National Gambling Impact and Policy Commission. The Commission's mission was to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on Federal, State, local, and Native American tribal governments, as well as on communities and social institutions generally. The Commission issued its final report in 1999.

² Bear Stearns, "E-Gambling: A Giant Beyond Our Borders," September 2002.

³ *USA Today*, August 22, 2003.

or information assisting in the placing of bets or wagers on any sporting event or contest; or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers; or for information assisting in the placing of bets or wagers.”⁴

The Federal Wire Act applies to those “engaged in the business of betting or wagering” and, therefore, apparently cannot be used to prosecute simple bettors. By its terms, the Act appears to apply only to gambling on sporting events. While the vast majority of prosecutions under the Act have involved sports gambling, cases involving other forms of gambling under the Act are not unknown.⁵

As previously noted, the majority of Internet gambling operations are located offshore – primarily in the Caribbean and in Central and South America – making enforcement of the Wire Act very difficult. Furthermore, in order to enhance their ability to conceal their identities from U.S. law enforcement and avoid prosecution, offshore sportsbooks can utilize the latest Internet technology available to assist setting up accounts, accepting wagers, and paying winners.⁶

Many states have recognized the inherent difficulty in regulating Internet gambling. As Florida Attorney General Robert Butterworth put it in 1997:

State law prohibits an individual in Florida from placing a bet or wager by wire communication or by use of the Internet. However, . . . the burgeoning growth of the Internet and the difficulty in adopting and implementing durable and effective enforcement mechanisms, makes any effort to regulate the Internet’s use better suited to federal legislation, rather than a patchwork attempt by individual states.⁷

In fact, in urging federal assistance, the state attorneys general have also identified limitations of the Federal Wire Act that need to be addressed. In 1999, the National Association of Attorneys General (NAAG) called for an expansion in the language of the Wire Act to prohibit Internet gambling and for federal-state cooperation on this issue – a highly unusual move for an organization that usually argues against federal intrusion into areas of traditional state responsibility. In a letter to the National Gambling Impact Study Commission, Wisconsin Attorney General (now Governor) James Doyle wrote that “NAAG has taken the unusual position that this activity must be prohibited by federal law, and that State regulation would be ineffective.”⁸

⁴ CRS, “Internet Gambling: Overview of Federal Criminal Law,” Report for Congress 97-619, March 7, 2000, p. 5.

⁵ CRS, p. 6.

⁶ Sen. Rpt. 106-121, “The Internet Gambling Prohibition Act,” July 26, 1999.

⁷ National Gambling Impact Study Commission, p. 5-9.

⁸ National Gambling Impact Study Commission, p. 5-9.

Problems Associated with Internet Gambling

Eases Criminal Activities

Stealing Money and Credit Card Numbers from Customers. With their offshore locations, many Internet gambling operations are able to alter, move, or entirely remove sites within minutes, allowing dishonest operators to take credit card numbers and money from deposited accounts and then quickly close down before law enforcement can act.⁹

“Cheating” on Games. Gambling operators may tamper with gambling software to manipulate games to their benefit. Unlike in the physical world of highly regulated casinos, ascertaining the integrity of operators on the Internet is quite difficult.¹⁰

Money Laundering. Gambling on the Internet provides remote access, encrypted data, and most importantly, anonymity. Because of this, a money launderer need only deposit money into an offshore account, use that money to gamble, lose a small amount of that money, and then cash out the remaining funds. Through the dual-use protection of encryption and anonymity, much of this can take place undetected.¹¹

Encourages Youth Gambling

While many Internet gambling sites require gamblers to certify they are of legal age to gamble, most make little or no attempt to verify the accuracy of the information. Furthermore, the heavy use of the Internet by those under the age of 21 has led to concerns that they may be particularly susceptible to Internet gambling. Of particular concern is the special attraction of youth to on-line sports wagering. The National Collegiate Athletic Association (NCAA) has voiced concerns with Internet sports gambling among college students. In testimony before the Senate Judiciary Committee’s Subcommittee on Technology, Terrorism, and Government Information, a representative for the NCAA stated that sports gambling “remains a growing problem on college campuses. . . . If left unchecked, the growth of Internet gambling may be fueled by college students. After all, who has greater access to the Internet?”¹² Meanwhile, the director of Harvard Medical School’s Division on Addiction Studies likened the Internet to a new delivery form for narcotics. Said Dr. Howard J. Shaffer, “As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced.”¹³

⁹ National Gambling Impact Study Commission, p. 5-5.

¹⁰ National Gambling Impact Study Commission, pp. 5-5, 5-6.

¹¹ National Gambling Impact Study Commission, p. 5-6.

¹² National Gambling Impact Study Commission, p. 5-5.

¹³ National Gambling Impact Study Commission, p. 5-5.

Exacerbates Pathological Gambling/Human Cost

A National Research Council report notes that “many families of pathological gamblers suffer from a variety of financial, physical, and emotional problems, including divorce, domestic violence, child abuse and neglect, and a range of problems stemming from the severe financial hardship that commonly results from pathological gambling. Children of compulsive gamblers are more likely to engage in delinquent behaviors such as smoking, drinking, and using drugs, and have an increased risk of developing problem or pathological gambling themselves.”¹⁴ The report further finds that “as access to money becomes more limited, gamblers often resort to crime in order to pay debts, appease bookies, maintain appearances, and garner more money to gamble.”¹⁵ Another cost to gamblers is loss of employment and bankruptcy. Roughly one-fourth to one-third of gamblers in treatment in Gamblers Anonymous report the loss of their jobs due to gambling while 28 percent of the 60 pathological gamblers in one study reported either that they had filed for bankruptcy or reported debts of \$75,000 to \$150,000.¹⁶

Also Places a Toll on Society

According to a National Opinion Research Center (NORC) report, the annual average costs of job loss, unemployment benefits, welfare benefits, poor physical and mental health, and problem or pathological gambling treatment amount to approximately \$1,200 per “pathological gambler” per year and approximately \$715 per “problem gambler” per year. The NORC report further estimated that lifetime costs of gambling (bankruptcy, arrests, imprisonment, legal fees for divorce, etc.) amounted to \$10,550 per pathological gambler, and \$5,130 per problem gambler. With those figures, NORC calculated that the aggregate annual costs of pathological gambling caused by the factors cited above were approximately \$5 billion per year, in addition to \$40 billion in estimated lifetime costs.¹⁷

Imposes a Negative Impact on Sports

Internet gambling has also tainted amateur and professional sports. The integrity of the outcome is essential to sporting events and to the credibility of the organizations that sponsor them. Athlete involvement in gambling can compromise that integrity. As a recent *USA Today* article makes clear, there have been several recent examples of amateur and professional athletes heavily involved in sports gambling. Washington Capitals hockey star Jaromir Jagr recently admitted to running up a \$500,000 debt betting on sports events. In addition, former Florida State quarterback Adrian McPherson pleaded no-contest recently to charges of betting on college and professional sports, including his own games. While there is no evidence that either player

¹⁴ National Research Council, “Pathological Gambling: A Critical Review,” April 1, 1999, pp. 4-7, 4-8, 5-2.

¹⁵ National Research Council, p. 5-3.

¹⁶ National Gambling Impact Study Commission, p. 4-13

¹⁷ National Gambling Impact Study Commission, p. 4-14.

altered the outcome of a game for gambling purposes, such actions are not uncommon. For instance, a 1998 University of Michigan study found that 35 percent of 758 student-athletes surveyed had gambled on sports and that 5 percent of the males had either provided inside information for gambling purposes, bet on their own sporting events, or accepted money to play poorly. The problem is considered serious enough that major U.S. pro sports leagues and the NCAA support legislation blocking payments to online gambling operations.¹⁸

Solutions

Because the perpetrators of Internet gambling are almost exclusively offshore and beyond the reach of U.S. law enforcement tactics, further legislative mechanisms are necessary to help prosecute and prevent illegal Internet gambling. Proponents of increased enforcement against illegal Internet gambling have proposed specific mechanisms:

- *Criminalize the use of financial instruments used for illegal Internet gambling.* Create a new crime – accepting financial instruments, such as credit cards or electronic fund transfers, for debts incurred in illegal Internet gambling.
- *Enable injunctions to be issued to any party, such as financial institutions, Internet service providers, and computer software providers, to assist in the prevention or restraint of Internet gambling.* Law enforcement would gather evidence of illegal activity and request a court to enjoin any party that reasonably can help stop the illegal activity, primarily by discontinuing processing transactions to or from the gambling business.
- *Allow federal banking regulators to require financial institutions to use designed methods to block or filter illegal Internet gambling transactions.* Require the Federal government to issue regulations establishing policies and procedures reasonably designed to filter or block illegal transactions.

Legislative Options

The “Unlawful Internet Gambling Funding Prohibition Act,” sponsored by Senators Kyl (R-AZ), Shelby (R-AL), and Feinstein (D-CA), would require the Secretary of the Treasury to promulgate regulations prohibiting banks and other financial institutions from processing transactions of illegal Internet gambling. In addition to providing criminal penalties, it permits the Attorney General and state authorities to seek a court injunction to prevent violations that may include orders blocking access to offending Internet sites. It also affords Internet service providers and financial institutions protection from the legal consequences of their good faith cooperation. Finally, the bill contains language to ensure the continuation of currently lawful Internet gambling by the Indian tribes. To be certain that the bill does not alter the Indian Gaming Regulatory Act, the bill specifically provides that it shall not be “construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.”

¹⁸USA Today, August 22, 2003.

H.R. 2143, sponsored by Rep. Leach (R-IA), and S. 627 are modeled on legislation passed by the House during the 107th Congress (H.R. 556).

Conclusion

Illegal Internet gambling is growing exponentially. It is not a victimless crime. Congress has been asked to help states enforce their policies against this criminal activity, and federal law enforcement authorities need more tools to do so. Congress should respond by enacting legislation such as S. 627 that will provide state and federal authorities with the means to enforce the laws prohibiting Internet gambling.