IDEA GROUP PUBLISHING
701 E. Chocolate Avenue, Suite 200, Hershey PA 17033, USA
Tel: 717/533-8845; Fax 717/533-8661; URL-http://www.idea-group.com
ITP4653

Legalization of On-Line Gambling

Mario Alba Jr., Louis J. Papa, Anthony Basile, Stuart Bass, and Eugene Maccarone
Hofstra University, 600 Old Country Rd., Suite 327, Garden City, NY 11530
Tel. 516.222.1912; Fax. 516.222.1851; E-mail. maz524@msn.com

INTRODUCTION

Gambling has always been legal in the United States. The gaming industry continues to grow as more Americans view gambling as entertainment rather than a vice (Edward M. Yures, *Gambling on the Internet: The States Risk Playing Economic Roulette as the Internet Gambling Industry Spins Onward*, 28, Rutgers Computer & Tech. L.J. 193, 196, 2002). In recent years, Internet gambling, which exists without any significant regulation, has exploded in popularity (David Goodman, *Proposals for a Federal Prohibition of Internet Gambling: Are There Any Other Viable Solutions to This Perplexing Problem?*, 70, Miss. L.J. 375, 379, 2000). As a result, politicians have struggled with laws that limit or ban the use of Internet gambling (Craig Lang, *Internet Gambling: Nevada Logs In*, 22, Loy. L.A. Ent. L.J. 525, 526, 2002). To date, all attempts at controlling or eliminating on-line gambling have been unsuccessful. The more prudent option would be for the government to place its seal of approval on Internet gambling so that it can draw gamblers away from unregulated sites and generate substantial tax revenues.

HISTORY AND GROWTH OF INTERNET GAMBLING

Despite scorn by Puritan settlers, gambling quickly became popular in the colonies (Lang, *supra*, at 528). While there has been great opposition to all forms of gambling at various times, increased regulations have never amounted to a total ban on gambling activities (*Id*.). Today, gambling is as popular as ever. One study found that approximately 86 percent of Americans have gambled at least once during their lifetime (Yures, *supra*, at 195). In 1999 alone, there were over 58 billion dollars in legal wagers, and that figure was expected to grow rapidly in subsequent years (*Id*. at 196, 197). As legitimate gambling continues to grow, it is no surprise that Internet gambling is also growing at a healthy rate. Current statistics estimate the number of on-line casinos at 2000, all of which are off-shore (Goodman, *supra* at 379.). The amount of money pouring into Internet casinos has skyrocketed from 2.2 billion in 2000 to over 4 billion in 2002 (Ira Sager et al., *The Underground Web*, *BusinessWeek*, Sept. 2, 2002, pg. 66). This is a major concern for politicians because at least 80% of the on-line gambling done in the U.S. is illegal (*Id*.). Politicians cite both a threat to America's youth and rampant fraud as reasons to prohibit on-line gambling (Lang, *supra* at 534).

IS BANNING ON-LINE GAMBLING FEASIBLE?

Through the implementation of The Wire Act and The Travel Act, Congress has been unsuccessful in regulating on-line gambling. Proposed laws, such as the Internet Gambling Prohibition Act (IGPA), in conjunction with credit card agencies have deterred these illegal activities.

The Wire Act

The Wire Act prohibits the use of wire communication outlets, in either interstate or foreign commerce, by persons engaged in the business of betting and wagering on any sporting event or contest (Goodman, *supra* at 386). The Wire Act has been proven ineffective against Internet gambling because individual gamblers are not "engaged in the business of betting or wagering" and the Act is unclear as to whether non-sports related gambling fall within its reach (*Id*.).

The Travel Act

The Travel Act provides in part that, "…whoever…uses the mail or foreign commerce, with intent to (1) distribute the records of any unlawful activity … or (3) otherwise promote, manage, establish, carry on or facilitate the promotion, management, establishment or carry on, or any unlawful activity … shall be fined under this title or imprisoned not more than five years, or both" (Beau Thompson, *Internet Gambling*, 2, N.C. J.L. & Tech. 81, 91-92, 2001). The Act includes a prohibition against "any business enterprise involving gambling" (*Id*.) The Act, while it could presumably punish individual gamblers, has similar shortcomings as the Wire Act in that they involve primarily supply-side regulation (*Id*. at 93). Individual bettors seemingly have very little to fear from these laws, so they will continue placing bets. Additionally, web-site operators will continue to provide the services if they feel that the benefits outweigh any potential sanctions.

The Internet Gambling Prohibition Act

Congress has made several attempts to enact new legislation or update the Wire Act to specifically target on-line gambling. The IGPA has yet to pass as legislators voice worry over the amount of regulation the law would create for Internet users (Lang, *supra*, at 535-536).

The Attack on Payment Mechanisms

The latest, greatest attempt to shut down illegal on-line gambling sites has lawmakers and regulators targeting what has been called Internet gambling's "Achilles' heel—its heavy reliance on credit cards" (Linda Punch, *Are All Bets Off for Online Gambling?*, Credit Card Management, Sept. 2002). Already seven of the top ten credit card issuers refuse on-line casino transactions (David Colker, *Net Casinos Find They Can't Bet on Plastic*, *L.A. Times*, Sept. 1, 2002, pt.3, pg. 1). This desire to stay out of the market does not stem from gambling being harmful, or even illegal; rather card companies are hesitant to involve themselves in a field where it may be possible for customers to avoid their debts (*Id*; See Also *In re Mastercard*, 132 F. Supp. 2d at 468 (1999)). Authorities have also targeted companies such as PayPal, a payment service widely used to gamble on-line (Matt Richtel, *PayPal and New York in Accord on Gambling*, *The N.Y. Times*, August 22, 2002, C8).

To attack the gambling problem, card companies are refusing to sign up merchants that knowingly offer Internet gambling (Punch, *supra*). This pull out of the market, while certainly depressing the industry's growth, is not likely to halt it (Colker, *supra*). European banks seem all too eager to enter into a consistently growing four billion dollar industry (Punch, *supra*).

Additionally, alternative payment methods such as wire transfers, money orders, traveler's checks, bank drafts, cashier's and certified checks are already being used; as well as "e-cash" which is in development (William Jenkins, Jr., *Internet Gambling*: *An Overview of the Issues*, GAO Reports, Dec. 2, 2002).

WHY LEGISLATION FAILED

By trying to regulate or eliminate on-line gambling, greater evils have been created. Strict laws in the U.S. prohibiting on-line gambling are proving as powerful a deterrent as Prohibition was to drinking in the 1920s (Sager et al., *supra*).

The cost of policing on-line gambling far outweighs the benefits received in outlawing the activity. At the same time, the government loses the potential tax dollars it could have received by legalizing these sites (Thompson, *supra*). Legislators, with the aid of most of the major credit card companies, tried to eliminate on-line gambling by policing illegal gambling websites and by blocking money transfers to these sites. However, these attempts have two main weaknesses: lack of personal jurisdiction and the creative circumvention of the website owners.

Copyright © 2003, Idea Group Inc. Copying or distributing in print or electronic forms without written permission of Idea Group Inc. is prohibited.

Lack Of Personal Jurisdiction

The biggest obstacle that legislators face with regards to regulating Internet gambling is obtaining personal jurisdiction over statutory offenders (*Id*. at 95). Since most sites are located abroad, the most obvious concern with any proposed legislation is whether or not such casinos can be effectively prosecuted in American courts.

There are two major related jurisdictional problems in the area of the Internet: 1) Is jurisdiction based upon where the bet is received or where it is placed; and 2) Are offshore casinos subject to jurisdiction in American courts? If both parties to the transaction reside in states which allow gambling, then the solicitation and placing of the bet is permissible. The jurisdictional determination becomes relevant, however, when the bettor, who is from a state that allows gambling, accesses a web-based casino operated from a state in which gambling is illegal, and vice versa. However, American bettors can mask their location by dialing to an offshore Internet service provider ("ISP") before logging into a cybercasino. This allows the gambler to appear to be located in an area where gambling is legal. Essentially, a conflict of laws problem arises and the question then becomes which jurisdiction is proper (*Id*. at 96-97).

Some cases appear to provide a conclusive answer that any company that advertises on the Internet will be subject to personal jurisdiction in every state where people can access the company's website and conduct business. Other courts find the mere operation of a website too tenuous of a connection with a state to grant personal jurisdiction. (*N.Y. v. Lipsitz*, 174 Misc.2d 571, 663 N.Y.S.2d 468 (1997)).

The Rise Of The Black Market

The creation of legislation such as the Wire Act and the uncertainty of litigation surrounding on-line gambling led credit card companies such as American Express and Discover to develop company wide policies that restrict the use of credit cards for Internet gambling (Jennings Jr., *supra*). Illegal website owners have devised ways to allow patrons to deposit money in their on-line accounts. These "merchants" have accomplished this in many ways. First, they disguise transactions by miscoding them (*Id*.). Second, they attempt to circumvent the system by using on-line payment providers, and other non-credit card payment methods (*Id*.). Third, Internet merchants are able to circumvent the coding system by engaging in factoring (*Id*.). Factoring occurs when a merchant submits credit card transactions through another merchant's terminal by using that merchant's identification number and category code, and pays that merchant a percentage of the submitted transactions. (*Id*.).

ARGUMENTS FOR LEGALIZATION

There are many arguments in support of the legalization of on-line gambling. First, gambling is simply a form of entertainment and American consumers are free to spend their entertainment dollar on a product from which they derive the most utility (Thompson, *supra*, at 86). Second, Internet gambling allows computer users the opportunity to partake in casino activities from the comforts of their home without going on vacation (*Id*.) Third, they can avoid the numerous traps that the onsite casino experience entails such as the glitz and glamour of the Las Vegas Strip or the Atlantic City Boardwalk, which induces people to spend money they otherwise may not have spent (*Id*.).

The creation of these web sites will also generate substantial revenues and job opportunities that are of great benefit to local communities (Thompson, *supra*, at 87). The major benefit to the communities is the increased tax revenues received from gaming operations. Casinos generate millions of dollars of revenue each year that are used to subsidize government programs that benefit the community as a whole (*Id*.). By making the activity illegal, hundreds of millions of dollars will be lost each year, and this money will remain in the hands of those website operators who are able to evade the law (*Id*. at 102).

Credit card companies will also benefit. Cardholders use alternative methods to deposit funds in their accounts while others use European or Caribbean banks. While consumers might be hesitant to deposit funds in a Caribbean bank, they don't have a concern depositing money in German, French, Dutch or English banks (Punch, *supra*). These card issuers that feared losing potential revenue can now compete and reap the benefits of one of the fastest growing industries in the world.

In addition, where some companies refused to get involved in such a high-risk industry, others like VISA and MasterCard did not have such a restriction (Jenkins Jr., *supra*). Instead, both associations have developed procedures that enable member banks to block Internet gambling transactions (*Id*.). Officials from both associations explained that since some members are located in countries where Internet gambling is legal reaching a global, blanket policy among members would be difficult (*Id*.) With legalization, companies can compete in an expanding business market and save money on trying to police merchants who were previously miscoding or factoring..

Creation Of An SEC-Like Organization

It is easy to draw parallels between the stock exchange and gambling, especially sports gambling. Unlike the market maker who takes a percentage on both ends of the transaction, the bookmaker only adds the "VIG" when the gambler loses. However, gambling is looked upon as a vice while stock traders are viewed as entrepreneurs. So, if the entrepreneurs have the SEC looking over their shoulder, then on-line gambling should mirror its brother.

The need for regulation is great. For example, Las Vegas slot machines usually are required to pay back from 90 percent to 98 percent of all of the money played; in cyberspace, however, there is no regulatory regime to impose such a requirement (Goodman, *supra*, at 383). With Internet gambling, the house develops and manipulates the odds and controls the account of the player without oversight from any regulatory body (*Id*.). Hence, there are real concerns that the odds on various games are rigged in favor of the house. Even if the player does win, the uncertainty surrounding the legality of Internet gaming sites have allowed disreputable site operators to refuse payment because they face no uniform legal consequences (Thompson, *supra*, at 89). Not only must players worry about the deck being stacked against them from the outset, they have to consider the possibility that they will never receive their winnings from the website proprietor. Additionally, even if the gambling website is honestly run, computer hackers may intercept the gambler's credit card or other financial information (Goodman, *supra*).

CONCLUSION

There is a legitimate concern that Internet gambling may pose a potential for addiction even greater than that associated with traditional gambling activities (Goodman, *supra*, at 384). Prior attempts to eliminate or even criminalize this behavior have failed. Proposed legislation has led to lost revenues, increased policing costs, and money filtering to offshore merchants and foreign banks. Therefore, the federal government should be allowed to make their own assessments in wholesale fashion about the desirability and legality of Internet gambling rather than have the states decide the issue. Their assessments should lead to legalizing Internet gambling, not only to increase revenues for the public and private sector, but will allow the government to regulate an industry that it has let run wild.

Copyright © 2003, Idea Group Inc. Copying or distributing in print or electronic forms without written permission of Idea Group Inc. is prohibited.

0 more pages are available in the full version of this document, which may be purchased using the "Add to Cart" button on the publisher's webpage:
www.igi-global.com/proceeding-paper/legalization-line-gambling/32220

Related Content

A Case of Academic Social Networking Sites Usage in Malaysia: Drivers, Benefits, and Barriers
Maryam Salahshour, Halina Mohamed Dahlanand Noorminshah A. Iahad (2016). *International Journal of Information Technologies and Systems Approach (pp. 88-99).*
www.irma-international.org/article/a-case-of-academic-social-networking-sites-usage-in-malaysia/152887

Socio-Economic Processes, User Generated Content, and Media Pluralism
Androniki Kavoura (2018). *Encyclopedia of Information Science and Technology, Fourth Edition (pp. 7270-7280).*
www.irma-international.org/chapter/socio-economic-processes-user-generated-content-and-media-pluralism/184423

Optimization of Cyber Defense Exercises Using Balanced Software Development Methodology
Radek Ošlejšekand Tomáš Pitner (2021). *International Journal of Information Technologies and Systems Approach (pp. 136-155).*
www.irma-international.org/article/optimization-of-cyber-defense-exercises-using-balanced-software-development-methodology/272763

Systems Engineering Processes for the Development and Deployment of Secure Cloud Applications
Muthu Ramachandran (2015). *Encyclopedia of Information Science and Technology, Third Edition (pp. 4424-4435).*
www.irma-international.org/chapter/systems-engineering-processes-for-the-development-and-deployment-of-secure-cloud-applications/112884

Compounds Based on dDped Bi2O3 as New Ecologically Friendly Yellow-Orange Shade Pigments
Petra Šulcováand Nataliia Gorodylova (2015). *Encyclopedia of Information Science and Technology, Third Edition (pp. 2844-2853).*
www.irma-international.org/chapter/compounds-based-on-ddped-bi2o3-as-new-ecologically-friendly-yellow-orange-shade-pigments/112705