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Internet Gambling

by
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Gambling is essentially a risk-taking activity, in which someone offers something of value, usually money, in exchange for a chance to win something of greater value, usually *more* money. In its many forms gambling has long existed, but before the 20th century it was confined primarily to those present at a specific physical site.

The telephone and the telegraph greatly expanded the possibilities; it is no longer necessary to be there in the flesh to bet on a football game. Now, the Internet is expanding the possibilities still further. One can play poker or roulette from a computer in one's den, or place a real-time bet on a cricket game in India.

The technology. Internet gambling sites enable one to wager on sporting events, political races, and other contests. On-line casinos accommodate patrons who would otherwise be forced to travel long distances to bet at bricks-and-mortar casinos. This technology gives customers the convenience and privacy of gambling from their own homes. This accessibility raises concerns for two reasons. First, there is a fear that it makes gambling too easy. The sport who would travel to Atlantic City to blow a wad only once a year can now do it every night without stirring from home. Second, most states have decided that citizens should not have easy access to casinos; Internet gambling undermines this governmental decision and flouts authority.¹

Background. Despite its dubious legality in most of the US, Internet gambling attracts one million American customers daily. Already, 4.5 million people have gambled on-line, according to the Pew Internet and American Life Project. On-line gaming grew to a \$2.2 billion-a-year business in 2000, with experts predicting a rise to \$6.3 billion by 2003. The total number of gambling sites has grown to over 21,000, although this number may be inflated by franchises that allow several sites to operate under the aegis of one parent site. The actual number of distinct sites may be closer to 700.² Still, according to the Pew report, when people list their favorite on-line activities, gambling is at the bottom of the list.³

The US first tried to regulate the ability to communicate wagers using electronic means with the federal Wire Wager Act of 1961, which prohibits the use of a “wire facility for the transmission of...bets or wagers” or even for the transmission “of information assisting in the placing of bets or wagers.” The US Justice Department has contended that the Wager Act also applies to Internet gambling.⁴ In fact, this law was used in August 2000 to sentence Jay Cohen, chief executive of World Sports Exchange, to 21 months in prison.⁵ However, because the law was written and passed before the Internet existed, the applicability of the law to on-line gaming remains dubious.

To date, only one bill regarding Internet gambling has passed either chamber. The Internet Gambling Prohibition Act (S. 474), sponsored by Senator John Kyl (R-Ariz.), passed the upper body in 1997. Corresponding House efforts have failed, despite several attempts in the 106th Congress. The most notable of these was H. R. 3125, which fell short despite modifications to make it acceptable to social conservatives. This bill at first held bettors liable for wagering on-line. Then, amid concerns that this provision would be unenforceable, Internet Service Providers were made liable if they did not remove or disable gambling sites once aware of them. This revision raised several issues about government using ISPs as its policemen.⁶ Rumors soon spread that the language had been changed again to make credit-card companies the law enforcers, requiring these companies to review customer purchases and report charges incurred while gambling. The ISP requirements and these rumors raised serious red flags for privacy advocates. Rep. Bob Goodlatte (R-Va.) reportedly is reworking the bill and hopes to bring it to a vote sometime during 2001.

Despite warnings that gambling is addictive, many continue to engage in betting of every kind on the Web.⁷ To see its popularity, type “gambling” or “casino” into a search engine, and you’ll return a plethora of sites offering easy access to betting on sporting events or more traditional, casino-style games. Even *The Gambler’s* Kenny Rogers is in on the action, having started his own Internet gambling site, www.kennyrogerscasino.com. Microsoft and Playboy have done the same.⁸

Attempts at prohibition in the US have frightened many away from this type of enterprise. Other nations allow casinos, requiring business

licenses but otherwise leaving them alone. They are legally treated like members of most other industries. Among the most popular places for Internet gaming sites are Antigua, Australia, and Costa Rica. This year the Australian government planned a 12-month freeze on Internet gambling, but strong opposition led to the squelching of these plans.⁹

In the US, bricks-and-mortar casinos are allowed to operate in Las Vegas, Atlantic City, Detroit, many Indian reservations, and several other locations. Internet gambling firms that offer betting to US citizens do so at their peril. Since Jay Cohen was sentenced, many operators, including Cohen's business partners, have refused to travel to the US. They ply their trade outside the reach of US law enforcement, without fear of prosecution or extradition.¹⁰ This nose-thumbing has state and federal legislators upset, but there is nothing they can do to prevent on-line gambling. Routing a browser to a foreign proxy server will evade blockages by an ISP or anyone else. Furthermore, encryption technology and even low-tech measures such as code words can bypass attempts at prevention.

Despite the impossibility of enforcement, many state and federal legislators will continue to try to erect parchment barriers to on-line gaming. Their motivations may be pressure from powerful lobbies, such as bricks-and-mortar casino associations and state lotteries hoping to stifle competition. Many socially conservative groups, such as the Family Research Council, also pressure lawmakers to protect people from their own "bad" decisions¹¹—a classic "Baptists and Bootleggers" alliance.¹²

The prohibitionists are getting some help from unlucky gamblers and credit-card companies. Credits cards are the chief vehicles of payment for off-shore gambling. Some American citizens want to skip on their losses by arguing that the credit-card company should not have let them bet over the Internet when such activity is, perhaps, against US law.¹³ Some financial institutions have issued policies stating that ATM or check cards cannot be used to fund accounts that "facilitate on-line gambling." Then, if the credit-card holder objects to his losses, the financial institution can legally withhold payment to the gambling establishment.

Policy recommendation. Pushing gambling sites off shore is a bad idea. It results in a net economic loss for the US and in a lack of redress for any US victims of fraudulent sites. Regulation or outright banning of industries for the good of the people is a misuse of law. With respect to gambling, it also reeks of hypocrisy. State governments that purport to be

so concerned about protecting people routinely sell lottery tickets, often to their poorest citizens, which carry rates of return so low that they would embarrass a Mafia numbers-racket operator.

Attempted regulation of gambling on the Internet also sets a dangerous precedent for restricting free speech and association. Furthermore, the enforcement of such regulation/legislation can only lead to invasions of individuals' privacy. Gambling is a conscious choice. It may be a bad one, but telling citizens what to think instead of encouraging them to think for themselves is a mistake. In addition, state governments should be encouraged to abandon their gambling schemes, which tend to attract those who can least afford them.¹⁴ Internet gambling sites should be able to operate in the US just as any other legitimate business, controlled only to protect people against theft and fraud.

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¹ News from Sen. Kyl's Office, 23 March 1999; available at kyl.senate.gov/s3-23-99.htm.

² Eric J. Sinrod, "Cracking down on Internet gambling," *Upside Today*, 10 October 2000; available at www.upside.com/Upside_Counsel/39elf68e0.html.

³ *Report: New Internet Users: What They Do Online, What They Don't and Implications for the Net's Future* (2000); available at www.pewinternet.org/reports/toc.asp?Report=22.

⁴ "Net Gambling: Gambling Fastest Growing Web Industry," *National Journal's Technology Daily*; available at nationaljournal.com.

⁵ Sinrod, "Cracking down on Internet gambling."

⁶ H. R. 3125 is available at thomas.loc.gov/.

⁷ Alan Mozes, "How Your Body Gets Hooked on Gambling," *Yahoo! News* (Reuters), 8 December 2000; available at dailynews.yahoo.com/h/nm/20001208/hl/gambling_1.html.

⁸ James Ledbetter and Steve Viuker, "Gambling online? You bet!" *CNN.com News*, 4 May 1999; available at www.cnn.com/TECH/computing/9905/04/gamble.idg/.

⁹ www.casino.ru/ewse.html; see also "The Wonderful Wagerers of Oz," *Wired News*, 15 December 2000; available at www.wired.com/news/politics/0,1283,40517,00.html?tw=wn_20001216.

¹⁰ Bruce Schoenfeld, "Internet Gambling: Why Is Washington Out To Stop It?" *Cigar Aficionado*, 24 September 2000; see also Aixa M. Pascual, "Offshore Betting: The Feds Are Rolling Snake Eyes," *Business Week*, 12 August 2000; available at www.theprescription.com/newsite/articles/081200a.htm.

¹¹ Ledbetter and Viuker, "Gambling online? You bet!"

¹² Bruce Yandle, "Bootleggers and Baptists—The Education of a Regulatory Economist," *Regulation* (September/October 1982), pp. 27-36.

¹³ www.casino.ru/ewse.html.

¹⁴ Robert R. Detlefsen, *Anti-gambling Politics—Time to Reshuffle the Deck*, (Washington, DC: Competitive Enterprise Institute, 1996).