
LEGAL PROBLEMS WITH ONLINE GAMBLING

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I. Introduction

Not long ago, Nevada and Atlantic City, New Jersey stood out from the rest of the nation as jurisdictions where one could bet legally. With the emergence of Indian gaming, state lotteries, riverboat gambling, and other forms of legal wagering, today two states (Utah and Hawaii) stand alone as the only jurisdictions without some form of legalized gaming. In fact, today anyone with a computer and Internet access can go to a "virtual casino" and gamble on almost any casino-style game or place bets on professional and collegiate sporting events.

Online gaming is emerging as a major enterprise for the Internet, and a serious concern for lawmakers.¹ There are presently more than 1,400 gambling (or "gaming") sites on the web. With about 14.5 million patrons, it is estimated that global revenues for Internet gaming were about \$4.2 billion in 2003.² Many observers believe that Internet gaming is well on its way to becoming a \$100 billion-a-year industry.

Despite its prevalence, Internet gambling is illegal in all fifty states.³ Several foreign nations, however, either sanction Internet gaming or do not enforce laws against it. Since web pages do not recognize international borders, a gaming site operated in any nation can attract gamblers from every other nation. Most Internet gamblers are from the United States,⁴ and that is a serious concern for American lawmakers.

Gambling, of course, has traditionally been seen as a vice, and in the United States it has a history associated with organized crime. As states have moved toward legalization, they have also instituted strict regulatory schemes designed to keep the games fair and the ownership honest. With Internet gaming, however, this may be impossible. "One of the most heavily regulated industries in the world has crashed with full force into one of the most unregulated, and inherently unregulatable, phenomenon of modern times."⁵

Several different concerns lead to the call for regulation or prohibition of Internet gambling:

- Concern about underage gamblers. Obviously, it is harder to verify age over the Internet than in person.
- Concern about fraud by Internet casino operators. Internet casino operators have already avoided paying their customers either by refusing to pay or by moving their website to another address and changing the name.⁶
- Concern that video gambling (whose addictive nature has been compared to crack cocaine)⁷ from the privacy of one's own home will lead to an increase in gambling addiction.⁸
- Concern that Internet casinos will negatively affect state tax revenues by taking business away

from brick-and-mortar casinos that pay taxes.⁹

These reasons for wanting to control Internet gaming, however, do not translate easily into action. When it comes to regulation or prohibition, there are two basic lines of thought. One line holds that Internet gambling cannot be entirely stopped, so it has to be regulated.¹⁰ The opposing argument is that it cannot be regulated, so it must be prohibited.¹¹ Unfortunately, both groups are partially correct: Internet gaming is very difficult to regulate or to prohibit.

Since many of the Internet gaming web pages are sanctioned by some foreign government, one possibility would be simply to rely upon the regulatory authority provided by that nation. An obvious problem with that solution is that regulation in another nation is unlikely to protect American gamblers. More importantly, many (but not all)¹² of the sanctioned virtual casinos are located in small, island nations that provide virtually no actual regulation; they just charge a fee.¹³ Consider:

In Nevada and New Jersey the applicant for an unrestricted gaming license can expect the process to take one to two years. The applicant has the burden of proving to the licensing authorities that it is legitimate and has the necessary skills available to operate a casino in compliance with the law. The applicant must pay the costs of the independent investigation undertaken to test the accuracy and complete truthfulness of its responses to the myriad questions answered in filling out the application. These costs routinely amount to between \$500,000 and \$1,000,000. There are public hearings to delve into personal and business transgressions admitted in the application or turned up in the investigation. These amounts do not take into consideration the legal fees that each applicant incurs in getting help and advice in connection with the process.¹⁴

In contrast, most of the off-shore nations that license Internet casinos charge between \$8,000 and \$20,000, and the time to obtain the license is between one and five weeks.¹⁵ Obviously, these other nations do not devote as much time and effort to gaming regulation as is expected in the United States. As such, reliance on the laws of other nations will not meet the needs of American lawmakers.¹⁶

Since gambling has traditionally been a matter of state concern, some individual states have taken action to try to stop Internet gambling. In 2001, for instance, New Jersey's Attorney General filed civil suits against three offshore casinos.¹⁷ This is in line with similar actions taken by officials in New York, Minnesota, and Missouri.¹⁸ In Florida, the Attorney General distributed "cease and desist" letters to at least ten media companies providing publishing or broadcasting advertisements for offshore computer gambling sites.¹⁹

The Attorneys General of Indiana, Minnesota, and Texas have all issued opinions specifically declaring Internet gambling illegal under the laws of their respective states,²⁰ and other states are putting new legislation in place.²¹ Legal actions, however, are very difficult to bring. The Internet casino operations are usually located beyond the state's jurisdictional limits,²² and even if the necessary evidence could be uncovered, prosecutors are unlikely to go after individual gamblers. As such, states have been unable to significantly impact online betting.

Federal law has its own problems.²³ The U.S. Department of Justice takes the position that Internet gambling is illegal under at least four federal statutes: the Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act (otherwise known as the Travel Act);²⁴ the Professional and Amateur Sports Protection Act;²⁵ the Interstate Transportation of Wagering Paraphernalia Act;²⁶ and the Wire Act.²⁷

The most notable prosecution was probably that of Jay Cohen, an American citizen who set up a bookmaking business in the Caribbean island of Antigua. Although Cohen's operation was based exclusively in Antigua, it targeted customers in the United States through advertisements in American radio, newspaper, and television. Bets on American sporting events were accepted either by toll free telephone or via the Internet.

The FBI began an investigation of the company in 1997. In a 15-month period, Cohen's company collected approximately \$5.3 million in funds wired from nearly 1,600 customers. Cohen was eventually arrested and charged with criminal conspiracy and substantive offenses under the Wire Act. His various asserted defenses were rejected in a lengthy Circuit Court opinion, and Cohen was convicted and sentenced to 21 months in prison. Both the conviction and the sentence were upheld on appeal.²⁸

Despite the holding in Cohen's case, there are significant questions about the applicability of existing federal legislation to on-line casinos, which might be viewed differently from a sports betting operation like Cohen ran.²⁹ The current federal legislation was enacted with an eye toward prohibiting sports betting, but none of the current federal statutes expressly deal with Internet casino-style gambling. Recently, the U.S. Fifth Circuit Court of Appeals held that the Wire Act does *not* apply to Internet casinos.³⁰ As such, federal legislators have been scrambling to come up with laws that can be effective in stopping or regulating Internet gaming. While they differ in details, there are two principal areas of focus: Internet service providers and financial transactions facilitators.

II. Internet Service Providers and the Kyl Bill

Senator Jon Kyl of Arizona has proposed at least two versions of the Internet Gambling Prohibition Act, more commonly known as the "Kyl Bill."³¹ The most recent congressional action on Internet gambling occurred in the summer of 2003, when the Senate Banking Committee voted 19-0

to approve restrictions proposed by Kyl and the House voted 319-104 to outlaw the use of credit cards, checks and other bank instruments to pay for Internet bets. The House version was similar to the original version of Kyl's legislation, but the Senate Banking Committee added a provision to prevent states from authorizing online wagers within their borders. That immediately drew opposition from the American Gaming Association, which complained this would favor Indian gaming and the parimutuel industry over mainstream casinos. See Tony Batt, *Congress Unlikely to Act on Internet Gambling: Budget Expected to be Top Priority of Post-election Agenda*, LAS VEGAS REVIEW-JOURNAL, Oct. 27, 2004. This legislation would focus on Internet Service Providers ("ISPs"). ISPs provide a direct connection from a company's networks to the Internet. They may also provide related services such as virtual hosting, leased lines (T-1 or T-3) and web development. Since no web page can operate without being located on a server, ISPs make logical targets for law enforcement. Among the largest national and regional ISPs are AT&T, WorldNet, IBM Global Network, MCI, Netcom, UUNet, and PSINet.

The Kyl Bill would make it illegal for any person engaged in a gambling business to knowingly use the Internet to place, receive, or otherwise bet or wager, or to send, receive, or attract information aiding in wagering or betting.³² The logical problem with targeting ISPs would seem to be in demonstrating that the ISP knew the character of the activity offered on each of millions of websites that it serves. "To expect each ISP to know the nature and content for all existing and new hosts is unrealistic and a viable defense to criminal prosecution."³³

Aware of this problem, Senator Kyl structured his bill to allow any local, state, or federal law enforcement agency to notify an ISP of an aberrant server and request that the ISP terminate its service. The legislation would shield ISPs from civil liability if they voluntarily terminate service to the offending web page.³⁴ On the other hand, if the ISP fails to discontinue service, the law enforcement agency can seek a preliminary injunction requiring it to terminate service.³⁵

Despite the thought that went into the Kyl Bill, it still suffers from the problem of being unable to affect ISPs hosted in foreign nations where Internet gaming is legal.³⁶ As such, it seems that a law focusing on ISPs will ultimately be unable to prohibit or regulate Internet gambling in an effective manner.

III. Financial Transactions

Internet gaming relies on the use of credit cards and other means of transferring funds. As such, many legislators and commentators have identified financial institutions as a possible focus for Internet gaming regulation.

[I]t is obvious that, in order for an Internet or related telephonic gambling operation to be commercially viable, money must flow from bettors to the operator and presumably in the opposite

direction as well. The mechanisms for these transfers are the financial service providers, i.e. credit card companies, banks, and other entities that provide the means for fund transfers. Control of such financial service providers can therefore constitute a very potent and effective means of enforcing (albeit indirectly) a prohibition against illegal gambling activity.³⁷

In 2002, the New York Attorney General took action against online casinos by suing Citibank and PayPal for facilitating them. Citibank ultimately paid \$100,000 in costs and \$400,000 to groups providing counseling to recovering problem gamblers.³⁸ It also agreed to “block and decline authorizations for bankcard transactions consistent with and pursuant to, then-standard Visa and MasterCard rules and procedures for posting to bankcard accounts that are marketed to consumers in the United States.”³⁹

The New York Attorney General also reached a settlement with the money transfer service, PayPal, Inc.⁴⁰ This agreement provided that PayPal would stop “processing any payments for online gambling merchants, where such payments involved New York members.”⁴¹ PayPal paid \$200,000 in costs, penalties, and “disgorgement” of online gaming profits.⁴² There have also been attempts by losing gamblers to avoid payments to credit card companies for gambling debts (based on the Statute of Anne).⁴³

Because of legal actions like these, many leading credit card companies, including Bank of America, Fleet, Wells Fargo, MBNA, Chase Manhattan and others, now attempt to block Internet gaming transactions.⁴⁴ It can be, however, difficult for financial institutions or government regulators to identify a particular business as being in the casino industry. This is particularly true if the business seeks to disguise itself by handling transactions through an ancillary “ghost” firm that shows up as a legitimate, non-gambling business.⁴⁵ When that is done, “it is extremely difficult for regulators [or financial institutions] to differentiate Internet gambling Web site data transfer and legal data transfer.”⁴⁶ Because of dodges like this, 85% of online casinos are able to report that they accept Visa and Mastercard, and about two-thirds report that they accept PayPal.⁴⁷ So, like laws aimed at ISPs, federal laws aimed at financial institutions are not having much success in stopping online gambling.

IV. International Concerns and the WTO

Recently, the World Trade Organization issued a preliminary ruling against the United States on Internet gaming. The island nations of Antigua and Barbuda contended that the United States ban on Internet gaming was an unfair trade practice in violation of the terms of its agreement with the WTO. Antigua and Barbuda complained that the United States through the various federal statutes in combination with state laws has created the effect of a complete and total prohibition of Internet gambling. Antigua also argued that the United States’ ban on allowing its residents to use online wagering services based in Antigua harmed its ability to diversify Antigua’s economy.

A panel from the WTO ruled that a United States ban on Internet gambling was indeed a violation of global trade rules. It held that the United States was violating its commitments under the General Agreement on Trade Services (GATS) by not providing market access and/or national treatment under GATS to Internet gambling services provided by operators licensed by the governments of Antigua and Barbuda. The Bush Administration has vowed to vigorously appeal the decision.⁴⁸

Under international law, if the panel is upheld Antigua and Barbuda could impose trade sanctions (which would hurt their economies more than the United States), or the United States might elect to pay sanctions to the two nations. Obviously, neither of those outcomes is likely. The problem that may one day arise is that a more formidable nation with an economic interest in Internet gaming, such as England, may also challenge the United States laws and regulations.⁴⁹ If that happens, the United States may be forced to take another look at how it treats Internet gambling.

V. Conclusion

In 2002, the United States General Accounting Office performed a survey of Internet gambling web sites. The findings showed that current federal statutes are not effective in controlling Internet gambling.⁵⁰ Recent legislative proposals that have focused on ISPs or financial institutions also have difficulties. Must, then, American lawmakers resign themselves to permanent, unregulated Internet casinos? Maybe not.

Since Internet casinos cannot be stopped as long as they are legal in other nations, American lawmakers should focus on a certification process for online casinos. Those casinos that are already operating traditional gambling establishments within the United States could be given the opportunity to develop online casinos which would be accessible through a regulatory gateway page.⁵¹ These online casinos would face competition from unregulated virtual casinos, which might be able to operate at a lower cost than the regulated web pages. Gamblers wanting assurance of fair games, however, would presumably be interested in using the regulated pages, particularly when they are linked to well-established casino brand names.

Regulators (and tax authorities) would have substantial control over these online casinos, because of the brick-and-mortar casinos over which they also have control. As such, reasonable regulations could be put in place to assure fair games, verify the age of gamblers, collect taxes, and minimize the risk to problem gamblers (to the extent that is possible). Unregulated online gaming would still exist, but if this regulation were done correctly, these officially sanctioned web pages should be able to capture a significant portion of the market. Consumers would have the choice of betting with casinos that are regulated and fair, or they could take their risks with other entities that are less secure but might offer better odds. In the end, the market could play a significant role in bringing online gaming under control.

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Footnotes

¹ It is now estimated that gambling accounts for 4.3% of all e-commerce. Adrian Parke & Mark Griffiths, *Why Internet Gambling Prohibition Will Ultimately Fail*, 8 GAMING LAW REVIEW 295 (2004).

² Hearings Before the Subcomm. On Crime, Terrorism and Homeland Security, House Comm. on the Judiciary, 108th Cong. (2003), available at <http://www.usdoj.gov/criminal/cybercrime/Malcolmtestimony42903.htm> (statement of John G. Malcolm, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice); Lawrence G. Walters, *The Law of Online Gambling in the United States—A Safe Bet, or Risky Business?*, 7 GAMING LAW REVIEW 445, 445 (2003) (“Some studies show that over 1,800 Internet gambling sites exist on the web, with a total of 14.5 million users placing bets”).

³ United States General Accounting Office, Interim Report on Internet Gambling, September 23, 2002, on the Internet at <<<http://www.gao.gov/new.items/d021101r.pdf>>>.

⁴ Sue Schneider, *The Market: An Introduction*, in INTERNET GAMBLING REPORT V 47, 48 (Mark Balestra ed., 2002); Parke & Griffiths, *supra* note 1, at 295 (50% to 70% of the Internet gamblers worldwide are from the United States).

⁵ Jeff German, *Fed Panel Focuses on Internet*, LAS VEGAS SUN, May 22, 1998 (quoting Wisconsin Assistant Attorney General Alan Kesner testifying before the National Gambling Impact Study Commission).

⁶ Thompson, 2 N.C. J. L. & Tech. at 88.

⁷ *Gambling Fever Burns up Bills, then Lives, and ‘It happens so fast’*, THE COMMERCIAL APPEAL (Memphis), April 4, 1994, p. 1A (citing Jim Jongewaard, director of recovery programs for chemical dependency and compulsive gambling at the Memphis Psychological Center). See also Ronald J. Rychlak, *Video Gambling Devices*, 37 UCLA L. Rev. 555 (1990).

⁸ Parke & Griffiths, *supra* note 1, at 295 (“the use of virtual cash, unlimited accessibility, and the solitary nature of gambling on the Internet” are “potential risk factors” for problem gambling). For a general discussion of the problems associated with the legalization of gambling, see Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 Miss. L.J. 291 (1995).

⁹ Internet casinos could also provide the federal legislators with the opportunity to get their hands on tax revenues from legal gambling.

¹⁰ See generally Parke & Griffiths, *supra* note 1, at 298 (“From the U.S. experience, regulating prohibition of Internet gambling effectively is unfeasible.”). “Given the unfeasibility of a blanket ban... focus should be redirected onto developing Internet gambling regulation.” *Id.*

¹¹ Senator Jon Kyl (R-AZ) summed up how he felt about Internet gambling in an interview when he said, “I don’t believe it can be regulated, so we have to prohibit.” Steven Crist, *All Bets Are Off*, SPORTS ILLUSTRATED, January 26, 1998, p. 85.

¹² Australia, Austria, Belgium, Germany, Great Britain, and South Africa all license some form of online gambling operations.

¹³ Thirty percent of Internet gambling web sites claim to hold licenses from either Antigua or Curacao. United States General Accounting Office, *Internet Gambling: An Overview of the Issues*, Appendix IV: Survey of Internet Gambling Web Sites (December 2, 2002) (Report to Congressional Requesters). See also Christopher J. Murphy, *Online Bookmaking and Gaming in the Isle of Man*, 6 GAMING LAW REVIEW 89 (2002); Roger A. Petersen, *Internet Gaming in Costa Rica*, 5 GAMING LAW REVIEW 89 (2001) (noting that there is no specific legislation authorizing Internet gaming but that the authorities have not enforced the existing anti-gambling laws against online casinos); Jeff Dense, *The Socioeconomic Impact of Gaming in the Virgin Islands*, 8 GAMING LAW REVIEW 175 (2004) (noting that the Virgin Islands enacted legislation to legalize Internet gaming, but that conflicts with U.S. law had hampered development of the industry). The Council of Ministers of the Isle of Man recently issued a statement indicating that it will be actively marketing itself as a jurisdiction which does not place any restrictions on the acceptance of wagers from U.S. residents. Isle Of Man reconfirms its commitment to developing as a well regulated Tier One Online Gaming Jurisdiction, January 4, 2005, <<<http://www.gov.im/ipa/ViewNews.gov?page=lib/news/ebusiness/isleofmanreconfi.xml&menuid=11570>>>.

¹⁴ Chuck Humphrey, *Licensing Online Gambling by Foreign Countries*, Gambling-Law-US.com, <<<http://www.gambling-law-us.com/Articles-Notes/online-licensing.htm>>> (2003).

¹⁵ *Id.* This comparison does not even take into consideration the difference in taxes and fees that are charged and used to fund ongoing regulation.

¹⁶ This analysis could shift in the future, as Great Britain recently authorized online gaming, and other European nations may follow suit. See Mike Bruner, *Britain embraces Internet gambling*, MSNBC (2004) <<<http://msnbc.com/id/3071035/>>>.

¹⁷ See N.J. Dep’t of Law and Pub. Safety, Attorney General Announces Civil Action Against Three Internet Casinos, June 18, 2001, available at N.J. Dep’t of Law and Pub. Safety, Attorney General Announces Civil Action Against Internet Sports Betting Operations, June 18, 2001.

¹⁸ See, e.g., *People v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 862, 714 N.Y.S.2d 844, 852 (N.Y. S.Ct. 1999); *State of Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715 (Minn.Ct. App. 1997); *State v. Interactive Gaming Communications Corp.*, No. 197(f0014(1) (Mo.Cir. Ct., Greave Cty).

¹⁹ This action prompted many Florida companies to scale back their operations, move from Florida, or get out of the business all together. Lawrence G. Walters, *The Law of Online Gambling in the United States—A Safe Bet, or Risky Business?*, 7 GAMING LAW REVIEW 445 (2003).

²⁰ 95 Op. Fla. Att’y Gen. 70 (1995); 98 Op. Ind. Att’y Gen. 5 (1998); 96 Op. Kan. Att’y Gen. 31 (1996); 95 Op. Tx. Att’y Gen. DM-344 (1995).

²¹ See Kelly B. Kramer, *A New Front in the Battle Against Internet Gaming?*, 6 GAMING LAW REVIEW 21 (2002).

²² Though some states have claimed jurisdiction over any Internet site that is accessible from within that state. See Michael J. Dunne and Anna L. Musacchio, *Jurisdiction Over the Internet*, THE BUSINESS LAWYER, Vol. 54, No. 1, Pg. 385 (ABA Section of Business Law, November 1998); *Millennium Enterprises, Inc. v. Millenium Music, LP*, Civ. No. 98-1058-AA (D.C. Ore. 1999) (discussing numerous cases on the subject).

²³ Gaming is normally a matter for state control, but international Internet gambling transactions are subject to federal laws because under the Commerce Clause of the Constitution, Congress has power to regulate commerce with other nations. Parke & Griffiths, *supra* note 1, at 296.

²⁴ 18 U.S.C.S. sec.1952 (2004).

²⁵ 18 U.S.C.S. sec.3702 (2004).

²⁶ 18 U.S.C.S. sec. 1953 (2004).

²⁷ 18 U.S.C.S. sec. 1984 (2004). Other federal laws that possibly might be used to prosecute Internet gambling site operators and those affiliated with the site include sections 1955, 1956, and 1957 of Title 18 of the United States Code. CHARLES DOYLE, INTERNET GAMBLING: OVERVIEW OF FEDERAL CRIMINAL LAW 1 (Susan Boriotti and Donna Dennis ed., Novinka Books 2003). See also Adrien Goss, *Jay Cohen's Brave New World: The Liability of Offshore Operators or Licensed Internet Casinos for Breach of United States' Anti-Gambling Laws*, 7 RICH. J. L. & TECH. 32, 12 (2001).

²⁸ U.S. v. Cohen, 260 F.3d 68 (2nd Cir. 2001).

²⁹ The Wire Act is generally said to be the most directly applicable law, but the statutory language refers to "sporting event or contest," strongly suggesting that it is of limited applicability. Moreover, legislative history suggests that it is unlikely that federal prosecutors could successfully prosecute individuals for playing online casinos.

[T]he casual gambler's risk...does not come from current federal law and potential amendments to federal law. Section 1084, as currently written, could not be used as a tool to prosecute "casual" gamblers who participate in games over the internet.

Anthony Cabot, Internet Gambling Report IV 285 (2001).

³⁰ In Re Mastercard International Inc., Internet Gambling Litigation, 313 F.3d 257 (5th Cir., 2002) (finding that the Wire Act does not prohibit Internet gambling).

³¹ S. 627, 108th Cong. (2003). The version of the bill would have amended the Wire Act to prohibit Internet betting of any type, but it made exceptions for fantasy sports and horse racing. One of the most controversial provisions of this bill was that it would have extended the prohibition so as to make it illegal to gamble, not just to run a gambling site. Although the bill passed the Senate with ninety votes, it was never voted on during the 105th Congress and subsequently dropped.

Two years later, the IGPA of 1999 differed from its earlier counterpart in that it did not seek to amend the Wire Act but create a new section under Title 18. The 1999 bill also made more exemptions for lotteries, fantasy sports leagues, horse and dog tracks, and an individual bettor could no longer be prosecuted. The bill also suggested different punishments for Internet Service Providers, including injunctions and pecuniary damages. The 1999 IGPA still was twenty-five votes short of being placed on the President's desk.

³² Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. sec. 2(b)(2). The legislation would also prohibit gambling businesses from accepting credit cards, electronic fund transfers or other payment methods from online bettors.

³³ Cabot, *supra* note 29, at 188.

³⁴ Other federal legislation also provides "safe harbor" to innocent ISPs. See 17 U.S.C.A. § 512 (2004).

³⁵ Tony Batt, Arizona Senator Pushing Online Casino Gaming Restrictions, LAS VEGAS REVIEW-JOURNAL (Jan. 28, 2004), http://www.reviewjournal.com/lvrj_home/2004/Jan-28-Wed-2004/business/23091911.htm.

³⁶ The first version of the Kyl Bill would have made the placing of bets illegal. That provision, however, seems to have proved too controversial and it was dropped in the later version of the bill.

³⁷ Thomas N. Auriemma and Gary A. Ehrlich, *Proactive State Enforcement of Internet Gambling Prohibitions: Worth the Effort or Waste of Time?*, 6 GAMING LAW REV. 507-513 (2002). See generally Paul Hugel & Joseph Kelly, *The Internet, Gaming, RICO and Credit Cards: A Legal Analysis*, 4 GAMING LAW REVIEW 135 (2000).

³⁸ Joseph M. Kelly, *Payment Problems and New Solutions: From National Regulation to Global Solutions*, 7 GAMING LAW REVIEW 123, 124 (2003).

³⁹ Citibank, Assurance of Discontinuance, September 1, 2002, at sec. 18, cited in Kelly, *supra* note 38, at 125. The settlement agreement also provided that "a card member's use of a general purpose credit card in connection with gambling does not mean that the credit card issuer is involved in gambling or promotion of gambling." *Id.* at sec. 21. Additionally, part of the agreement stated that a consumers' use of credit cards for Internet gambling "cannot be deemed the promotion or facilitation of gambling." *Id.* at sec. 22.

⁴⁰ In its prospectus filed with the SEC on June 28, 2002, PayPal acknowledged: "Some online casinos use our product to accept and make payments. If these casinos are operating illegally, we may be subject to criminal prosecution for numerous laws, including but not limited to money laundering laws." PayPal Prospectus filed with the SEC, at sec. 9, cited in Kelly, *supra* note 38 at 124-125.

⁴¹ Citibank, *supra* note 39, at sec. 20, cited in Kelly, *supra* note 38, at 125.

⁴² *Id.*

⁴³ This common law doctrine, which has been modified by statute in most states, makes gambling debts unenforceable in court. See Rychlak, *supra* note 8, at 296-97. Some of the Internet debtor/gamblers have had cases settle on very advantageous terms. E.g., Providian Nat'l Bank v. Haines, Case No. CV 98-08858 (Cal. Super. Ct. 1998); Marino v. American Express, Case No. CV 99-6166 (Super.Ct. Marino Co. 1999); Oregon Circuit Court for the County of Clackamas, Case No. CCV 01-04094, cited in Kelly, *supra* note 38, at 125 (case by an online gambler against numerous defendants, including credit card companies, settled for approximately \$250,000).

⁴⁴ Press Release of the New York State Attorney General, *Financial Giant Joins Fight Against Online Gambling* (June 14, 2002); Kelly *supra* note 38, at 124. See also I. Nelson Rose, *Why Visa is Dropping Online Gambling*, 7 GAMING L. REV. 243-244 (2003). Rose notes that "[t]he credit card issued with the Caesars Palace logo specifically states that it cannot be used for gambling." *Id.* at 244.

⁴⁵ Parke & Griffiths, *supra* note 1, at 297.

⁴⁶ *Id.*

⁴⁷ United States General Accounting Office, *Internet Gambling: An Overview of the Issues, Appendix IV: Survey of Internet Gambling Web Sites* (December 2, 2002) (Report to Congressional Requesters); Parke & Griffiths, *supra* note 1 (also noting other ways around credit card limitations, such as the use of "E-cash").

⁴⁸ A spokesman for U.S. Trade Representative Robert Zoellick said that the preliminary ruling failed to take into account the negotiating record in the Uruguay Round of global trade talks, which created the WTO in 1995. Mills said that under the Clinton Administration, the language in the service agreements of those talks clearly intended to exclude gambling when the United States joined the WTO.

⁴⁹ This is not an unlikely possibility. EU nations are already facing similar pressure to ease restrictions on online gaming. See Thibault Verbiest & Ewout Keuleers, *Gambelli Case Makes it Harder for Nations to Restrict Gaming*, 8 GAMING LAW REVIEW 9 (2004); European Court of Justice, Case C-243/01, *Piorgiorgio Gambelli and Others*, November 6, 2003.

⁵⁰ United States General Accounting Office, *Internet Gambling: An Overview of the Issues, Appendix IV: Survey of Internet Gambling Web Sites* (December 2, 2002) (Report to Congressional Requesters).

⁵¹ Such gateway pages were employed in order to verify the legitimacy of charities in light of the Tsunami disaster in 2004-05.