



May 2005 – Gambling Law Update™

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Legislative Update

Although several attempts have been made by different lawmakers, Internet gambling prohibition measures have failed each year, while the industry continues to gain more ground with the American public. Now, with the rise of Internet poker fueling the fire, many Washington insiders believe that it will be impossible to tell Americans that the activity is illegal.¹ With such high-profile issues like the continuing war in Iraq, Social Security overhaul, and heightened tensions between both parties in Congress right now, it is not very likely that an anti-online gambling bill would make it to the Senate floor for a vote. Nevertheless, that did not stop Senator John Kyl (R.-AZ) from preparing to introduce the 2005 version of his Internet gambling legislation; the Unlawful Internet Gambling Enforcement Act of 2005. Like previous versions of the bill, this new version would still make it illegal to fund online gambling transactions, but this version fails to define legal and illegal gambling activity.² However, unlike previous versions, the bill is free of exemptions for Internet horse wagering, and state sponsored and regulated gambling like past versions have contained. Notably, the last exemption-free gambling funding prohibition bill, introduced in 2000 by Rep. Jim Leach (R.-IA), was ultimately killed by special interest groups seeking exemptions. The lack of previously-included exemptions in this bill, bodes ill for its chances of success, however given the increasingly conservative nature of U.S. lawmakers, anything is possible.

¹ Kevin Smith, *Prohibition 2005 – A Sneak Peak at the Kyl Bill*, Igamingsnews.com located at www.igamingnews.com/index.cfm?page=artlisting&tid=5843 (4.29.05).

² *Id.*

U.S. v. Antigua – WTO Ruling Confusion

The long-awaited appellate body ruling from the World Trade Organization (“WTO”) was finally released, however some questions still remain unanswered. While both sides claimed victory, the United States was clearly the big winner here, and not for the reasons that are most apparent. The U.S. Justice Department dodged a bullet with its attempts to restrict worldwide commerce through its enforcement of the Wire Act and other federal laws, and now the feds are apparently safe to prohibit online gambling directed at U.S residents, without violating any international trade agreements. Nevertheless, this most unfavorable ruling is not the worst part of the decision. The real concern for the industry is the purported justification for approving U.S. regulation of international gambling transactions. In its 138-page report, the appeals panel said the United States had demonstrated that the 1961 Wire Communications Act – which was written to cover sports betting by telephone and has been used to prosecute some Web site operators – “was necessary to protect public morals or maintain public order.”³ However, no evidence was submitted to the WTO, indicating that online gambling interferes with public morals or impacts public order. A clarifying statement on the scope of the ruling is expected to be issued by the trade body next month.⁴

Esquire Magazine Subpoenaed by Department of Justice

Right on the heels of the ruling by the WTO Appeals Body, *Esquire Magazine* has become the latest media outlet to be hit with a subpoena from the Justice Department over advertising for Internet gambling. The recent action, which was first reported by a *New York Post* article, relates to *Esquire* magazine’s April issue, which featured an eight-page insert entitled the “Gentlemen’s Guide to Poker,” sponsored by Internet poker site BoDog Poker. The insert also includes BoDog CEO Calvin Ayre’s photo and his tips for playing Texas Hold ‘Em online, along with several references to the BoDog Poker URL, images from the site, and the disclaimer: “Void where prohibited by law. Fully licensed in Costa Rica.” Since the beginning the of Justice

³ For further discussion on the WTO ruling and its potential implications, please see the author’s article, *The WTO Ruling – A Wolf in Sheep’s Clothing*, located at <http://www.gamblinglawupdate.com/archives/Deco%20Gaming%20Law%20Update.pdf>.

⁴ Rick Alm, *Online Betting Ad Draws Scrutiny*, Kansas City Star located at <http://www.kansascity.com/ml/kansascity/business/11496287.htm> (4.27.05).

Department's Internet gambling investigation, the DOJ has contended that any company accepting advertisements from online casino operators could be charged with aiding and abetting. The Department has stated in various letters, including correspondence to the American Broadcasting Association, that it believes that such advertisements are in violation of the Interstate Telephone Act of 1964 and that online gambling operators are violating the Federal Wire Act of 1961.⁵ *Esquire* spokesman Paul Luthringer confirmed that the magazine has received an "informational subpoena," and stated that "We intend to provide the information as required by the law, since there is no request of any editorial information which would be constitutionally protected."⁶ The author will continue to monitor this situation in future updates.

Federal Outlook

Interesting enough, the number of federally-approved secret court-authorized wiretaps across the country increased dramatically by 26 percent in non-terrorist criminal investigations according to the Administrative Office of the U.S. Courts.⁷ With its provisions set to soon expire, the federal government has touted the U.S.A. Patriot Act as a key tool in bringing terrorists to justice. The new provisions granted under the Act were used in connection with racketeering or gambling to obtain 128 wiretaps around the country, while homicides and assaults produced only 48 wiretap orders. This difference in wiretap request illustrates the level of priority and dedication that the federal government has in combating gambling activities.

A proposal is being studied by the U.S. Treasury which would grant the government unprecedented access to banking records, and force banks to disclose hundreds of millions of wire transfers to help fight terrorist financing. A sweeping intelligence bill passed by the U.S. Congress in December to overhaul the U.S. spy community called on the Treasury to study whether the proposal

⁵ Kevin Smith, *They're Baaack – Next Round of Subpoenas Targets Esquire*, Igamingsnews.com located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5823> (4.21.05).

⁶ Rick Alm, *Online Betting Ad Draws Scrutiny*, Kansas City Star located at <http://www.kansascity.com/mld/kansascity/business/11496287.htm> (4.27.05).

⁷ CNN.com, *Wiretaps in U.S. Jump 19 percent in 2004*, CNN.com located at www.cnn.com/2005/LAW/04/28/increased.wiretaps.ap/index.html (4.28.04).

was useful and feasible. A Treasury spokeswoman said, “Information collected from certain cross-border wire transfers could be incredibly valuable to our efforts to starve terrorists of funding.” While counterterrorism officials are eager to tap into this mother lode of financial information, some officials, bankers and experts question whether authorities can actually glean pertinent information from the flood of data, while protecting the privacy of banking clients.⁸

State Legislative Update

Although the state of Internet gambling in the United States is still somewhat uncertain, some states have taken it upon themselves to attempt to establish legislation to allow state licensing of Internet gaming sites. In South Dakota, Senate Bill 95, which is now law, permits state residents to use the Internet or telephone to place a bet on horse or dog tracks in other states. Residents who wish to wager on races in other states are now required to set up special accounts in South Dakota banks from which their bets will be deducted, and a 25 percent tax on every bet placed will go toward the support and operation of state tracks.⁹

Some states are looking towards Internet lottery sales as an additional source of revenue. Texas has been evaluating legislation which would allow players to establish an online account with the Texas Online Lottery Commission and pay for tickets over the Internet with debit cards. The bill, which would help the state to earn an additional \$100 million a year, was introduced on April 11, 2005 and referred to committee, where it passed by a unanimous vote.¹⁰ The bill now moves onto the full House. Illinois is also taking steps toward becoming the first state to bring its lottery online. The state’s Senate has passed a bill, SB0198, which would create a pilot program allowing state residents to purchase lottery tickets over the Internet. The bill, passed in the Senate 32 to 24 and unanimously voted out of House Committee, would amend the Illinois Lottery Law as well as the Criminal Code of

⁸ Caroline Drees, *More Bank Data May Not Aid Fight Against Terrorism*, Reuters.com located at <http://www.reuters.com/financeNewsArticle.jhtml?type=bondsNews&storyID=8212813> (4.18.05).

⁹ SD Senate Bill 95, *US Law Roundup – May 2005*, Igamingsnews.com located at www.igamingnews.com/index.cfm?page=artlisiting&tid=5840 (4.29.05).

¹⁰ TX HB 3540, *US Law Roundup – May 2005*, Igamingsnews.com located at www.igamingnews.com/index.cfm?page=artlisiting&tid=5840 (4.29.05).

1961.¹¹ It is estimated that the proposed Internet lottery sales would generate another \$60 to \$200 million for the state. Similarly, Georgia was also looking to regulate Internet lottery sales, and introduced a bill that passed in the state House, however the Senate adjourned for the year before it went for a vote.¹²

In Wyoming, citizens looking to continue to play games of chance are among a growing number of people that are buying long-distance phone cards that are loaded with sweepstakes points. These points can be used to play casino-type games on the Internet, where the winners receive a cash prize. There are similar games being played in Alabama, California, Florida, Hawaii, Massachusetts, South Carolina and Texas, with Arizona and Utah considering joining as well.¹³

While some states are gratefully looking towards revenue brought in by Internet gambling as way to raise state funds, others are looking to keep the activity out of their state all together. Indiana has become the latest state to pass a law prohibiting Internet gambling with the adoption of Senate Act No. 92. Signed into law and effective July 1, 2005, the law makes it a Class D felony for an operator of an Internet site to knowingly use the Internet to engage in unlawful or professional gambling or to promote such a site or service from within the state.¹⁴ Authored by Sen. David Ford, R-Hartford City, the law states: “A person outside Indiana who transmits information on a computer network . . . and who knows or should know that the information is broadcast in Indiana submits to the jurisdiction of Indiana courts for prosecution under this section.” It is believed to be more likely that the state will begin using other powers provided in the statute to block Indiana citizens from accessing the sites.¹⁵ Internet service providers that do not take the initiative to block gambling sites could eventually be

¹¹ Kevin Smith, *Illinois Gets Closer to Authorizing Internet Lottery Sales*, Igamingsnews.com located at www.igamingnews.com/index.cfm?page=artlisiting&tid=5828 (4.25.05).

¹² *Id.*

¹³ Associated Press, *Online Sweepstakes Say They Aren't Illegal Gambling*, located at <http://www.nbc4i.com/technology/4412561/detail.html> (4.25.05).

¹⁴ Associated Press, *Bills Signed Into Law by the Governor*, 13 WTHR Indianapolis located at <http://www.wthr.com/Global/story.asp?S=3265006&nav=9TaiZ8i6> (4.26.05).

¹⁵ Bradley Vallerius, *Indiana Prohibits Internet Gambling*, Igamingsnews.com located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5853> (5.4.05).

required by the attorney general to do so. Ford said the attorney general will begin compiling a list of sites that all Internet service providers will be required to block. “The major way for the attorney general to update the list is from notices that he may receive from local prosecuting attorneys,” Ford said. “The prosecuting attorneys will report sites that they become aware of from law enforcement agencies or from citizen complaints.”¹⁶

In North Dakota, the measure that would allow the state’s citizens to vote in 2006 on whether the definition of gambling should be amended to exclude Internet poker, reclassifying it as a game of skill, was defeated when the state’s Senate voted 44 to 3 to kill the bill. The Senate vote followed recent Justice Department actions, where the DOJ sent a letter to the North Dakota Attorney General Wayne Stenehjem stating that the proposed bill could be a violation of federal laws, coincidentally, the same federal laws that the WTO has been evaluating. North Dakota Attorney General Wayne Stenehjem sent the letter back to the state Senate Judiciary Committee, which voted against the bill.

Advertising Outlook

The Internet gambling industry has been filling the void for many media outlets that have been struggling to keep up with advertising revenue over the past few years. Despite this, the DOJ has maintained that Internet gaming advertisements, like Internet gaming itself, is illegal and that “anyone carrying them could be charged with aiding and abetting.” With the new rounds of subpoenas recently issued, many in the gaming industry are left wondering what the future may hold for advertising. A DOJ spokesman in Washington, DC said that little has changed in the eyes of the federal government since the launch of investigation. “Our position still stands that the advertisements are illegal and that anyone carrying them could be charged with aiding and abetting,” the spokesman said.¹⁷

¹⁶ *Id.*

¹⁷ Kevin Smith, *They're Baaack - Next Round of Subpoenas Targets Esquire*, Igamingnews.com located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5823> (4.21.05).

In spite of the Justice Department's crackdown on Internet gambling advertising, and its contention that it will be able to maintain restrictions on Internet gambling following the WTO ruling, the irony remains that 60 percent of all offshore gambling dollars comes from Americans.¹⁸ Similarly, about 70 to 85 percent of Internet poker players are believed to be United States citizens. Internet poker alone generated global revenues of \$1 billion in 2004 and is projected to top \$2.4 billion this year.¹⁹ With the revenues constantly increasing, some operators are developing free-play promotional strategies and promoting the sites on major TV networks as well as on numerous cable channels. These free-play sites allow players to get comfortable with a service without risking money, and are fast becoming a vital promotional tool for Internet gaming sites.

With the international popularity of Internet gaming spreading like wild fire, mainstream companies are also looking for new ways to cross promote their products along with popular gambling games. Absolute Vodka, in targeting young adults, has introduced a site featuring real time flash gaming. Once the player clears the age verification system, they have a chance to free-play Hold 'Em poker.²⁰ Internet gaming operators are turning to creative advertising when looking for new ways to promote their company. Just ask GoldenPalace.com, she was born April 27, 2005. The proud mother sold her naming rights on eBay to Internet casino GoldenPalace.com for \$15,100 while she was still pregnant. This seems to be a growing trend for the casino, as another baby due later this year will be named GoldenPalace.com, and recently 33-year-old Tennessee resident Terri Illagan legally changed her name to GoldenPalace.com as well.²¹ The woman formerly known as Terri has since made headlines worldwide, and has been featured on numerous radio and television shows, and Internet news sites.

¹⁸ Javad Heydary, *Advertising for Online Gambling – Is It Legal?* EcommerceTimes located at <http://www.ecommercetimes.com/story/opinion/42696.html> (4.28.05).

¹⁹ *Id.*

²⁰ Online Casino Reports, *Absolut Vodka Features Online Casino Poker Games*, located at http://www.onlinecasinoreports.com/news_show.asp?id=688 (3.27.05).

²¹ Casino City Times, *Woman Gives Birth to Casino Ad*, located at <http://casinocitytimes.com/news/article.cfm?contentID=150208> (4.28.05).

The Rise of Mobile Gaming

There has been a recent boom in Internet casinos and for the past several years the Internet gambling market and Internet casinos have been expanding at a rapid rate. More recently, there has been an increase in the popularity of the mobile Internet casino, with people starting to play Internet casino games on their portable hand held units and mobile phones. This increase in popularity has even led to the cross promotion between wireless giants like Orange and Internet casinos.²² The mobile phone and hand held units are fast becoming popular and feature almost all of the same perks you can receive when you use the Internet for entertainment. Launched in April, PokerRoom.com appears to be one of the first Internet gambling companies to allow its game to be downloaded into mobile phones.²³ The service highlights Internet gambling's rapid growth and accessibility. It only makes sense then that the Internet casino made its way to the mobile phone. It has already caught on in a big way and mobile Internet casinos are very popular in countries like Japan. However, the legal issues pertaining to mobile gambling remain clouded. While some legislation, like the Wire Act, may be more clearly applied to mobile gambling, other Internet-oriented laws like the CAN SPAM Act may not apply outside of traditional cyberspace. While telecommunications law attempts to catch up with the technology, the field of mobile gaming continues to explode; ignoring any legal impediments that may arise.

Nevada is once again trading uncharted territory in the United States in welcoming mobile gaming within its casinos. The Bill, AB 471, focuses on the use of mobile gaming devices that could be used while visitors are on the casino premises. It would only allow the activity in public areas of establishments holding non-restricted gaming license and operating at least 100 slot machines, along with at least one other game.²⁴ The bill passed in the General Assembly on 41-0 vote, and if it becomes law, casino visitors would be able to "check out" PDAs or similarly connected devices

²² Online Casino Reports, *Rise in Mobile Online Casino Gambling*, located at http://www.onlinecasinoreports.com/news_show.asp?id=700 (4.12.05).

²³ Mike Hughlett, *Internet Gambling Bets on Cellphones*, Chicago Tribune located at <http://www.orlandosentinel.com/business/orl-subizpoker01050105may01.1.3511446.story?coll=orl-business-headlines> (5.1.05).

²⁴ IGN, *Nevada Bill Would Authorize Wireless Gaming at Casinos*, Igamingsnews.com located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5850> (5.3.05).

enabling them to gambling while roaming the casino properties. The state's Senate Judiciary Committee has scheduled a hearing for May 11 to discuss the Bill.²⁵ If the bill is approved by the Senate Judiciary Committee at its meeting, it could be sent to the full Senate within days for a full vote. The law would go into affect immediately, but the Nevada Gaming Commission would then have to draft the exact regulations for mobile gaming and approve specific platforms like that of Diamond I, which has developed a wireless casino platform deployable at land-based casinos.²⁶ The system, "WiFiCasino GS," creates a secure wireless PDA-based gambling and media network designed for Vegas-style casinos and resorts, and enables patrons to gamble anywhere on casino premises.

International Outlook

The Gambling Bill, which overhauls Britain's outdated gaming regulations, was passed by Parliament and became law in April. In the struggle to save the legislation, the government agreed that there would be only one regional super-casino as a pilot rather than the eight previously included in the Bill. Initially the government had proposed as many as 20 super-casinos but was forced to accept the compromise in order to get other elements of the Bill – such as the establishment of the Gambling Commission and regulation in Internet gambling – on to the statute books. Officials hope that within months, a new commission, and a body of some 100 investigators, will be established to regulate the industry. The British government said that it was setting up a new commission to regulate gambling, including bets made on the Internet. A major focus of the legislation is to regulate Internet gambling, which has become increasingly popular in recent years. Internet gaming companies will be allowed to operate from Britain for the first time. Although the new commission will not have the power to regulate the practices of Internet casinos operating outside Britain, it could ban them from advertising here, the Department of Culture, Media and Sport said.²⁷

²⁵ Financial News USA, *News Release*, Financial News USA located at <http://www.financialnewsusa.com/release.php?rlsid=2183> (5.4.05).

²⁶ *Id.*

²⁷ The Kansas City Star, *Britain to Set Up Commission to Regulate Internet Gambling*, located at <http://www.kansascity.com/mld/kansascity/business/11347228.htm> (4.8.05).

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