

Gambling Law Update™
By: Lawrence G. Walters, Esq.
www.GameAttorneys.com

JANUARY 2004

2004 LEGISLATIVE UPDATE

While wagering over the Internet on horseracing across state lines has been legalized in 17 states, the United States Congress is still undecided as to whether additional forms of casino-style gaming should be prohibited. Senator Jon Kyl (R-Ariz.) continues to remain the leading anti-gambling voice in Washington. His latest effort at a prohibition bill, S. 627, passed the Banking Committee last summer, and a full Senate vote is expected early in the 2004 session.¹ If the bill is finally passed, it will have bank regulators using their enforcement power to force banks to stop payments from going to Internet casinos, essentially making illegal most, if not all, forms of payment for gambling online. The companion legislation, H.R. 2143, has passed the House of Representatives, so the squabbling is headed for an end no matter what.

Now, with revenues from Internet Gambling bets placed from the United States topping more than \$1 billion annually, according to Christiansen Capital Advisors, LLC, the online gambling industry is globally expanding. However, United States casino gaming companies may be left behind due to the possible effects of these proposed regulatory measures. A panel of legal and legislative experts assembled this past month for the National Council of Legislators and Gaming States meeting in Las Vegas to address such issues. Frank Catania, a former New Jersey state legislator and gaming regulator, now represents the Interactive Gaming Council, an international not-for-profit trade association for the online gambling industry. In his address to

¹ Mike Fish, *Legality of Online Gambling Remains Big Question Mark*, SI.com
www.sportsillustrated.cnn.com/2003/writes/mike_fish/12/26/internet.gambling (12.26.03)

the meeting's estimated 100 attendees, including 25 legislators from gaming states, he stated that Congress, in its most recent attempt to prohibit the processing of financial instruments for the purpose of Internet wagering, stalled last summer over whether state-licensed entities would be exempted from the legislation. At issue, explained Keith Kizer, a former advisor to the Nevada Gaming Commission ("NGC") now representing the state's Attorney General's Office, is whether the federal Wire Act of 1961 prohibits Internet gambling. He said the United States Department of Justice believes it does, and as a result, a bill enabling the NGC to adopt regulations governing Internet gaming in the state cannot move ahead.² According to Kenneth Kirchner, a representative of the National Thoroughbred Racing Association, the \$18 billion-a-year pari-mutuel industry was exempted from the Wire Act by the 1978 Interstate Horseracing Act, which was amended as it pertains to the Internet in 2000. That gives states the right to enact legislation allowing Internet or phone betting.³ "It makes more sense to develop a strict regulatory structure in the U.S. and let our gaming companies lead the world and individual states preserve and protect revenues," Catania argued. "The United Kingdom is now preparing to revamp its gaming laws, by 2005, (it) would bring all gaming, including sports betting, under one regulatory agency and include licensing and regulating Internet gaming. U.K. gaming officials have publicly stated they would not preclude their licensees from taking bets from the U.S.," he warned.⁴ The question now is whether the casino industry will be allowed to follow suit before foreign competition takes control.

² Jack Shinar, *Panel Wrestles with Internet Regulatory Issues*, <http://news.bloodhorse.com/viewstory.asp?id=19970> (01.11.04)

³ *Id.*

⁴ *Id.*

ADVERTISING ONSLAUGHT

The complex issue of gambling over the Internet in the United States continues to remain a complicated legal matter for many involved in the online gambling industry. Coupled with the recent attention given to gambling issues in the media, particularly the steady rise of the World Poker Tour's television series ratings on The Travel Channel, many in and out of the industry are questioning the legality of gambling advertising. The Travel Channel's World Poker Tour ("WPT") has been a hit with viewers. Since airing in April 2003, it now averages 5 million viewers each week, according to the casino-management company Lakes Entertainment. That makes it The Travel Channel's most-watched series ever. Even as the tour's first season is being shown for the third time, the numbers just keep on growing. Bravo's "Celebrity Poker Showdown" is also a major money maker for that channel, with popular contestants like Ben Affleck and Matt Damon drawing viewers. And soon to be launched, according to an announcement late last year: The Casino and Gaming Television cable network, devoted entirely to gambling.⁵ The ratings boost is a gold mine for networks such as The Travel Channel, which was supported by numerous commercials for Internet casinos and poker sites during the inaugural season in which the WPT quickly became its highest rated show.

However, an ongoing federal grand jury investigation into the advertising practices of the online gaming industry convinced many network executives to reevaluate their advertising policies and discontinue the online gambling advertisements, at least for now. A spokesman for The Travel Channel confirmed to I-Gaming News that the network has stopped accepting advertising from online casinos in conjunction with its telecasts of the WPT, but the policy could

⁵ Catherine Donaldson-Evans, *Vegas Baby: TV Bets on Gambling*, Fox News at www.foxnews.com/story/0,2933,108056,00.html (01.12.04).

be lifted.⁶ David Leavy, a spokesman for The Travel Channel's parent company Discovery Communications, said the decision was made solely by The Travel Channel and did not reflect input from WPT officials.⁷ The decision could affect one of the WPT's biggest events, the PartyPoker.com Million II tournament, sponsored by PartyPoker.com, which took place on a cruise ship last year. The winner of the event took home \$1 million, one of the highest prizes on the entire WPT. The PartyPoker.com Million III is scheduled for March during a cruise to the Mexican Riviera and again is slated to be part of the WPT schedule. Leavy said network officials will study the issue. All has been quiet since the Department of Justice's September 2003, issuance of subpoenas, which requested all records pertaining to advertisements by Internet gaming establishments dating back to 1997, along with warning letters to all major radio broadcasting networks, suggesting they could be in violation of the law by accepting Internet gambling ads. Despite federal restrictions, Internet gambling became a \$6.3 billion industry last year, with \$1 billion of that coming from the United States through mainly sports wagering, and is projected to reach \$7.6 billion this year, according to Christiansen Capital Advisors, LLC.

GAMBLING AROUND THE STATES

A Congressional report estimates that 50-70 percent of Internet wagering comes from the United States despite the fact that no state permits Internet gambling and only one state, Nevada, permits general sports betting at all.⁸ However, since the legality of Internet gambling remains in constant limbo, more and more states are forging ahead with regulatory measures for other types of gambling, particularly video gambling, racetracks, and state run lotteries. Options for legalized gambling have exploded around the country – from the Internet and multi-state lottery

⁶ Kevin Smith, *WPT Starts Season 2 with No I-Gaming Ads*, IGamingnews.com at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=4735> (12.12.03).

⁷ Id.

⁸ L.A. Lorek, *Web-site Gambling Advertising Targeted*, San Antonio Express-News at <http://news.mysanantonio.com/story.cfm?xla=saen&xlb=110&xlc=1110871> (01.09.04).

games to riverboats and casinos at tracks dubbed "racinos." Republican leaders of the Alaska State House are pushing ahead on video poker and state lottery, and even more changes could be coming to the gambling scenes in Indiana, Kentucky and Ohio, who all have proposed casino and racino expansion. Lawmakers in the three states are debating proposals and legislation that would either introduce or expand casino gambling operations.⁹

This year's recent surge in gambling activities has prompted at least one state to issue warnings to its residents. The Montana State Department of Justice is warning its residents not to become Internet gambling entrepreneurs because doing so is illegal. The warning was prompted when they learned a company is offering Montanans the chance to set up gambling sites as well. An advertisement recently published in a Montana paper, The Billings Gazette, encouraged people to operate their own online casino, said Gene Huntington, Montana's Gambling Control Division Administrator. The ad says the company, Sirbet.com, will help interested parties set up a site for online sports betting and games of chance for less than \$499, after which the operators can make \$5,000 to \$10,000 a week as their share of the profits.¹⁰ The Web site says Sirbet.com is licensed and operates from the island of Curacao in Netherlands Antilles in the Caribbean. The website's disclaimer encourages interested people to check the laws in their area before participating.

Additionally, deadbeat parents who gamble at riverboats and racetracks would have to give their children a cut of their winnings under a bill being considered by the Indiana State Senate. The bill, sponsored by Republican Senator Richard Bray, chairman of the state's Senate Judiciary Committee, would garnish the winnings of gamblers who owe child support. Casinos,

⁹ Patrick Crowley, *State Face Big Decisions on Gaming's Big Money*, The Enquirer at http://www.enquirer.com/editions/2004/01/11/loc_gamblenext11.html (01.11.04).

¹⁰ Associated Press, *State Warns Residents Against 'Net Gambling*, Las Vegas Sun at <http://www.lasvegassun.com/sunbin/stories/sun/2003/dec/10/515998571.html?internet%20gambling> (12.10.03)

betting parlors and racetracks would be required to check the name of any person who wins more than \$2,000 against the Federal Parent Locator Service, a database used by the IRS, state lotteries and other government agencies to keep track of parents who owe child support. The money the parents owe would be deducted from their winnings and sent to child support agencies. The winner would get whatever was left. Bray's bill, Senate Bill 143, was modeled after a national system proposed by President Bush. That program is part of a welfare reform bill awaiting action by the United States Senate.¹¹ However, casino operators say the new program raises privacy issues and could prove difficult to implement.

Kevin Mullally, executive director of the Missouri Gaming Commission, said that new research in Canada shows that problem gamblers signing a permanent blanket ban from casinos may not suit all problem gamblers. Some can learn to manage their disorder after being banned for a shorter period. Mullally recently told the Legislature's Joint Committee on Gaming and Wagering, that he is drafting "a menu of options" that would let a gambler choose a certain number of years or a lifetime ban. He said he hopes to have a proposal ready for consideration by Missouri's Gaming Commission this spring.¹²

GAMBLING IN THE UK

Critics of the United Kingdom's ("UK") Government, who plan to relax the gambling laws, are due to give evidence to Parliament about the draft Gambling Bill. Proposals included in the Bill allow Internet casinos to be based in the UK for the first time, and update other aspects of remote gambling. The measures have been welcomed by the online gaming industry in the UK, who will be eager to see that they are not watered down and no new restrictions are

¹¹ Lottery Post, *Indiana Bill Targets Deadbeat Parent's Winnings*, at www.lotterypost.com/threads79400.htm (01.09.04)

¹² The St. Louis Post-Dispatch, *Missouri Commission Proposes Changes to Lifetime Ban*, RGTOonline.com at <http://rgtonline.com/Article.cfm?ArticleId=46577&CategoryName=Headline&SubCategoryName=News> (01.07.04)

imposed as the Bill goes through Parliament. The Committee is due to report on the draft bill to both Houses by April 8, 2004, making recommendations to which the Government will have to respond.¹³ Meanwhile, the Royal College says the Government has been badly advised and increasing gambling opportunities “inevitably leads to an increase in the number of those who gamble to such a degree that damage results.”¹⁴

New regulations in the United Kingdom, to prohibit children who buy the latest mobile phones with Internet access from accessing pornography and gambling, are also being adopted by the area’s six largest mobile phone operators. The new regulations, agreed to by Orange, O2, T-Mobile, Virgin, Vodafone, and 3, will stop children from entering chatrooms, porn sites and gambling services. The regulations came after increased pressure from child protection organizations to in an attempt to halt Internet pedophilia. The regulations will ensure that companies require a customer to be over the age of 18 before purchasing a mobile phone with unlimited Internet access. The regulations will come into force later this year.¹⁵

INTERNATIONAL GAMBLING UPDATE

The question of whether or not to legalize gambling has been a hot topic in many foreign countries lately, and it appears that trend will continue this year. The Caribbean island nation of Antigua and Barbuda have succeeded in its bid to have the United States brought before the World Trade Organization (WTO) over a dispute involving Internet cross-border gambling and betting services. Accordingly, in December, a WTO dispute panel began hearing arguments in the case. In his opening statement, Antigua and Barbuda's Chief Foreign Affairs Representative Sir Ronald Sanders called the United States’ Internet gaming policies "simply protectionism."

¹³ Dominic Dudley, *Gambling Bill Critics to Argue Case to Parliament*, New Media Age at www.nma.co.uk/nma/story.asp?id=245683 (01.13.04)

¹⁴ *Id.*

¹⁵ David Batty, and Justin McCurry in Tokyo, *Children to Be Shielded From Abuse Via Mobiles*, The Guardian at www.guardian.co.uk/uk_news/story/0,3604,1120770,00.html (01.12.04)

Sanders charged America with breaking its obligations under the General Agreement on Trade in Services (“GATS”).¹⁶ He said, "Although the United States has advanced a number of disjointed defenses against our claims in this matter, the reality is that the United States is denying licensed and regulated Antiguan service suppliers access to the massive American gambling markets in violation of its commitments under the GATS." A final ruling is expected early in 2004.

The question of whether to legalize gambling has been a hot topic in Thailand, where illegal casinos operate rampantly, and most agree that the issue must be dealt with. However, the government is still studying the pros and cons of such a move. In Thailand, apart from the lottery run by the government, all other forms of gambling are illegal. Many analysts feel the government should just legalize the gambling industry in order to keep money from flowing out of the country and losing out on valuable tax dollars. Others worry that the social ramifications would be too severe. A recent poll suggests that Bangkok residents remain divided on the legalization of gambling. Many say thorough, independent studies still need to be conducted.¹⁷

Lawrence G. Walters, Esq., is a partner in the national law firm of Weston Garrou & DeWitt, with offices in Orlando, Los Angeles, and San Diego. Mr. Walters represents clients involved in all aspects of online gaming operations. Nothing in this article constitutes legal advice. Please contact your personal attorney with specific legal questions. Mr. Walters can be reached at Larry@LawrenceWalters.com, through his website: www.GameAttorneys.com, or via AOL Screen Name: “Webattorney.”

¹⁶ Interactive Gaming News, *Antigua Delivers Oral Argument to WTO Dispute Panel*, www.igamingnews.com/index.cfm?page=artlisting&tid=4733 (01.13.04)

¹⁷ Sarosha Pornudomsak, *Thai Government Mulls Decision on Legalizing Gambling as Debate Rages*, Channel NewsAsia's Indochina at <http://www.channelnewsasia.com/stories/southeastasia/view/65499/1.html> (01.09.04)