

Gambling Law Update™
By: Lawrence G. Walters, Esq.
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WTO RULES AGAINST UNITED STATES' GAMBLING PROHIBITIONS

Finding that United States' cross-border gambling prohibitions on its citizens were in violation of international trade agreements, the World Trade Organization ("WTO") issued a preliminary ruling in favor of the Caribbean island nation of Antigua and Barbuda. The United States' efforts to ban online gambling within its borders greatly affected Antigua and Barbuda, resulting in a loss of employment and revenue for the island nation. The WTO ruling, which will not be made public until some time in May, found that the United States was violating its commitments under the General Agreement on Trade in Services by not providing free trade in commercial services, mainly through its prohibition of online gambling transactions. The United States now has two months to appeal the ruling, and has made several announcements that it intends to do so. Richard Mills, a spokesperson for the U.S. Trade Representative's Office in Washington, stated, "We intend to appeal and will argue vigorously that this deeply flawed panel report must be corrected by the appellate body."¹ The preliminary ruling means that the United States will either have to change its policies for Internet gambling or face trade sanctions pending the outcome of the appeal.

While federal officials will not be losing much sleep over possible WTO sanctions, ignoring the ruling would further increase perceptions that the United States picks and chooses what international agreements it will honor, and may open up the possibility for future proceedings from additional countries that offer online gambling services. The case is a first for

¹ Richard Waddington, *Internet Roulette*, MSNBC.com at <http://msnbc.msn.com/id/4594859> (3/25/04).

the WTO because the ruling involves the Internet, and because the ruling will have a direct impact on a participating country's ability to regulate what it considers "moral vices."² According to The New York Times, "Several members of Congress said they would rather have an international trade war or withdraw from future rounds of the WTO than have American social policy dictated from abroad."³ Representative Bob Goodlatte (R-VA) said, "It's appalling, it cannot be allowed to stand that another nation can impose its values on the U.S. and make it a trade issue."⁴ Conversely, the same can also be said for lawmakers who impose their moral values on legislation that affects United States citizens; so where do we draw the line?

In response to the United States' proposed Internet gambling prohibition, the British Treasury stated, "We have taken the view that online gambling can be properly regulated through the new regulatory body: the Gambling Commission. The U.S. concerns over money laundering, problem gambling, child access and fair gambling can be controlled; but we acknowledge that regulators in the United States have reached different conclusions."⁵ Britain believes that United States law prohibiting Internet gambling has no jurisdiction outside the country and argued that the prohibitions apply only where the "operator" accepting bets is located and not where the punter resides.⁶ The possibility of the United States passing legislation that prohibits Internet gambling sparked an exchange of letters between the British Treasury and United States legislators, which revealed the fundamental disagreement. "The purpose of this legislation is to prohibit U.S. citizens from making Internet wagers, specifically

² Scott Miller, *WTO Ruling Said to Open U.S. to Internet Gaming*, *The Wall Street Journal Europe*; 32-2-741-1328 at http://www.quicken.com/investments/news_center/article (3/24/04).

³ Matt Richtel, *U.S. Online Gambling Policy Violates Law, WTO Rules*, *New York Times* at <http://www.nytimes.com/2004/03/26/technology/26gamble.html> (3/26/04).

⁴ *Id.*

⁵ John Gilmore, *UK and US in Gambling Review Row*, *Evening Standard* at <http://www.thisislondon.co.uk/news/businesss/article/timid75830?version=1> (3/17/04).

⁶ *Id.*

with companies outside the U.S. and close the U.S. market to Internet gambling operators in the United Kingdom,” Congressman John Conyers (D-MI) wrote in a letter to the Treasury.⁷

LEGAL PROCEEDINGS

Opponents of Internet gambling have been battling it out in court over whether a person is liable for debt acquired with a credit card while gambling at online casinos, as in the case of *In re MasterCard International, Inc., Internet Gambling Litigation*.⁸ In the original lawsuit, numerous class actions were filed in district courts around the country and were consolidated into two “test” cases. In the Plaintiffs’ suit against MasterCard International, Visa International and several other banks that issue MasterCard and Visa credit cards, (“Defendants”), Plaintiffs attempted to use the Racketeer Influenced and Corrupt Organizations Act (“RICO”) to avoid debts incurred when they used their credit cards to purchase credits or “chips” that were used to gamble at online casinos, and sought to recover injuries sustained from the alleged RICO violations. However, the Court ruled in favor of the Defendants and dismissed Plaintiffs’ additional RICO claims and remaining state law claims. The Court concluded that the Plaintiffs did not allege facts showing a pattern of racketeering activity or the collection of unlawful debt, a RICO enterprise, or participation in the management of the enterprise.⁹ Importantly, the Court held that the Wire Act did not prohibit the Internet gambling at issue in these cases. As for the Plaintiffs’ remaining state law claims, which concerned statutes prohibiting gambling proceed transactions, the Court noted in its dismissal that it had previously determined that the transactions at issue consist of two events: 1) Plaintiffs’ transaction with the credit card

⁷ *Id.*

⁸ *In re MasterCard Intern., Inc.*, 2004 WL 369729 (Feb. 19, 2004) See also: *In re Mastercard International Inc., Internet Gambling Litigation*, 132 F.Supp. 468 (E.D.La.2001) *In re MasterCard International, Inc. Internet Gambling Litigation*, 313 F.3d 257 (5th Cir.2002) affirmed.

⁹ *In re MasterCard Intern., Inc.*, 313 F.3d at 261.

company, which ends upon the receipt of credit, and 2) Plaintiffs' subsequent online gambling.¹⁰ Plaintiffs' claim failed because the transactions with the financial institutions at issue took place before the gambling occurred.

Lawsuits against casinos by gamblers are now becoming more prevalent throughout the United States. In Michigan, two "compulsive gamblers," who signed up for a voluntary program where they were banned from casinos, have filed lawsuits against three casinos in state court alleging breach of contract since the casinos allowed them to continue gambling and failed to keep them out.¹¹ Michigan, like six other states, provides a program where compulsive gamblers can place their names on a list that enables them to voluntarily ban themselves from casinos and face arrest if they attempt to enter.¹² However, compulsive gamblers are not the only ones to bring lawsuits against casinos for gamblers' gambling activities. In *Snowney v. Harrah's Entertainment, Inc.*,¹³ the Court attempted to evaluate the advertising practices of casinos. In that case, the Plaintiff sought to exercise personal jurisdiction in California over several divisions of Harrah's, a Nevada-based casino corporation, and their marketing company ("Defendants"). The Court concluded that some of the Defendants did not qualify for the exercise of personal jurisdiction because they did not own or operate the hotels. However, based on advertising in California,¹⁴ an interactive Internet Website,¹⁵ a toll-free number for hotel reservations,¹⁶ and other advertising activities purposefully directed at California residents,¹⁷ the Court held that the remaining Defendants who owned and operated the Nevada hotels had sufficient contacts with California to justify the exercise of personal jurisdiction.

¹⁰ *In re MasterCard Intern., Inc.*, 2004 WL 369729 at 3 (E.D.La.)

¹¹ Wendy Davis, *Gambling On Casino Cases*, ABA Journal, at 18, April 2004.

¹² *Id.* at 18.

¹³ *Snowney v Harrah's Entertainment, Inc.*, 2004 WL 440183 (Mar. 11, 2004).

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 4.

With all this talk of legal proceedings in the gaming industry, it is about time to mention the release of Jay Cohen from the Nellis Federal Prison Camp. Cohen was the only one of twenty-one offshore sports book operators who was indicted for violating the Wire Act to actually face charges in a United States court.¹⁸ Cohen, who plans to seek employment outside of the Internet gambling industry, is not finished with his battle in the United States court system since his legal team has just been granted the right to appeal the dismissal of his *habeas corpus* petition.¹⁹ The recent WTO ruling may also aid Cohen in his quest for vindication since it deals with the issue of cross-border gambling. “I still maintain I ran a legal business in another country,” Cohen said. “I regret that I did not get a fair trial or a fair appeals process. What if I were Chinese and ran a Website in the U.S. that was critical of China, then returned to China and was jailed? Would the U.S. support China on that?”²⁰

THE ADVERTISING ONSLAUGHT

The grey area surrounding advertising practices in the interactive gaming industry has convinced many network executives to reevaluate their advertising policies and discontinue online gambling advertisements, at least for now. Among the broadcasting giants that have already pulled Internet gambling advertisements are Clear Channel Communications, Infinity Broadcasting and the Discovery Networks. And now, amid rumors of federal government pressure, the search engines Google and Yahoo! are following suit. Google and Yahoo! have announced plans to stop taking advertising from gambling-related Websites. Although Google is pulling online gambling ads in all markets, officials with Yahoo! said they will continue to carry advertising on the company’s global sites, which are published in numerous languages and

¹⁸ IGN Staff, *Cohen Again Challenges 200 Conviction*, www.igamingnews.com/index.cfm?page=artlisting&tid=4972 (3/25/04).

¹⁹ *Id.*

²⁰ E. Koch, *Gaming Operator Freed From Prison*, Las Vegas Sun at www.casinocitytimes.com/news/article.cfm?contentID=141757 (3/23/04).

marketed throughout the world.²¹ While specific legislation prohibiting Internet gambling has yet to pass both the House of Representatives and the Senate, “advertising an illegal activity ought to be illegal itself,”²² federal officials say. Family News In Focus boasted that “a quiet federal campaign against the marketing of illegal Internet gambling sites is under way and apparently having an effect.”²³ The campaign by the federal government was kicked into high gear last June, when Deputy Assistant Attorney General for the Criminal Division of the Justice Department, John G. Malcolm, sent a letter to trade groups representing publishers and broadcasters. The letter warned trade groups that their members may be in violation of federal law by aiding and abetting online casinos through the acceptance of ads. However, 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.

LEGISLATIVE UPDATE

With revenues from Internet gambling bets placed from the United States topping more than \$1 billion annually, according to Christiansen Capital Advisors, LLC, the National Collegiate Athletic Association, (“NCAA”), is not only maintaining its stance against wagering, it is even speaking out against casual office pools, which can range from \$1 to \$5 to enter. According to Bill Saum, Director of Agent and Gambling Activities for the NCAA, “Those individuals in \$1 pools might believe we’re going over the edge, but the fact is, across the U.S., the stakes grow to \$10, \$50, thousands of dollars, and on Wall Street, it enters into the hundreds

²¹ K. Smith, *Yahoo, Google Cut I-Gaming Ads*, www.igamingnews.com/index.cfm?page=artlisting&tid=5002 (4/06/04).

²² T. Phillips, *Broadcasters Halt Web Gambling Ads*, Family News In Focus at www.family.org/cforum/fnif/news/a0031260.cfm (3/19/04).

²³ *Id.*

of thousands. It's difficult to say pools are 'sort of OK.' We know, for example, that pools are an entry point for youths into gambling."²⁴

In Washington, Senator Jon Kyl (R-AZ) continues to remain the leading anti-gambling voice. His latest effort at a prohibition bill, S. 627, passed the Banking Committee last summer. However, previous versions of this Bill have not been aggressively acted on by Congress or have died in committee. Although most industry leaders believe that this Bill has no chance of passing during an election year, the issue may once again rear its ugly head once the WTO ruling is finalized. The Bush Administration's proposal to withhold prize money from gambling winners who owe child support was left out of the budget resolution recently approved by the Senate committee. Representative Shelley Berkley (D-NV) stated that the measure, which would force casinos to take on enforcement duties, "creates a new bureaucracy to process information and leaves the gaming business and the customer at the mercy of any mistakes or misinformation generated by that new bureaucracy. Should banks check the court records of all customers making deposits or withdrawals? Must car dealers invoke the same requirements against their customers? The answer is no, but approval of the Administration's proposal will open the door to further costly and unreasonable mandates on our business communities."²⁵

INTERNATIONAL GAMBLING OUTLOOK

Asian gaming markets continue to proliferate as the popularity of Internet gambling is becoming widespread throughout the region. Operators of online casinos have long viewed Asia as the Promised Land, believing that widespread prohibitions there have created a large demand for their product. Angela Ho, President of the www.DrHo888.com Website and daughter of

²⁴ K. Smith, *NCAA Holds Its Stance Against Betting*, <http://www.igamingnews.com/index.cfm?page=artlisting&tid=4954> (3/19/04)

²⁵ S. Struglinski, *Casino Supporters Block Child Support Collection Measure*, Las Vegas Sun at <http://rgtonline.com/article.cfm?articleId=47852> (3/12/04).

Asian casino king Dr. Stanley Ho, said that due to rapid market growth her Costa Rica-based site has recently seen an increase in monthly wagering of up to 40 percent by the almost exclusively Asian or Asian-speaking clientele.²⁶ In keeping in line with this trend, the Philippine Amusement and Gaming Corp. (“Pagcor”) is set to launch its first Internet casino.²⁷ The company believes the move will enable them to attract new customers at home and abroad. It is anticipated that Asian nations will constitute a large percentage of the online gambling market as the use of new technologies such as mobile phones and PDA’s for wagering increases.²⁸

Internet gambling is proliferating around the globe into new sectors and providing much needed revenue to its hosting country. In Canada, the Atlantic Lottery Corporation (“ALC”) announced plans to open an online version of its casino, a move that is already being criticized by some influential anti-gambling advocates.²⁹ ALC’s defense is that millions of gambling dollars are leaving the region through the Internet, and gambling online is only for leisure and not for money. The online casino operator estimates that Atlantic Canadians spend up to \$20 million a year on Internet gambling, with most of that money going offshore.³⁰ However, opponents of the plan are concerned over whether the gambling addict problem will only grow worse. Conversely, in response to the growing concern over “problem gamblers,” the New Zealand government has proposed a “problem gambling strategy.” The plan is aimed at reducing any adverse effects of gambling by working with communities to increase awareness of harms;

²⁶ M. Bruner, *Internet Gambling Makes Waves in Asia*, MSNBC.com at <http://msnbc.msn.com/id/4311924/> (2/26/04).

²⁷ ABS-CBN News, *Pagcor Launches Internet Casino*, located at <http://www.abs-cbnnews.com/flashnewsstory.aspx?flashOID=15841> (3/20/04).

²⁸ M. Bruner, *Internet Gambling Makes Waves in Asia*, MSNBC.com at <http://msnbc.msn.com/id/4311924/> (2/26/04).

²⁹ Maddy, *Atlantic Lottery Proposes Internet Gambling*, Online Casino News at http://www.onlinecasinonews.com/ocnv2_1/article/article.asp?id=4897 (3/23/04).

³⁰ *Id.*

the government plans to fund the effort through a proposed problem gambling levy which would be collected from the gambling sector.³¹

NATIONAL GAMBLING OUTLOOK

Options for legalized gambling are exploding around the United States – from the Internet and multi-state lottery games to riverboats and casinos at tracks dubbed “racinos.” As 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. In Maryland and Pennsylvania, state legislators are attempting to legalize gambling in an effort to stop its citizens from spending money in out-of-state casinos in New Jersey, West Virginia, Delaware and New York. Although such proposals have died in the past, it is believed that since the states are facing an array of financial problems, the proposal is likely to pass.³² In Washington, the state’s House of Representatives passed Senate Bill 6481, a Bill that will allow the state to offer advanced deposit wagering via the Internet and telephone on horse races.³³ The measure will now add Washington to the growing number of states that offer wagering to its residents through Internet and phone accounts.

Since its airing in April 2003, the Travel Channel's World Poker Tour has become a hit with viewers and now averages 5 million viewers each week, according to the casino-management company Lakes Entertainment, making it the Travel Channel’s most-watched series ever. Bravo’s “Celebrity Poker Showdown” is also a major money-maker, with popular celebrity contestants drawing viewers, many of them college students. The popularity of these

³¹ New Zealand Scoop, *Government Proposes Problem Gambling Strategy*, located at <http://casinocitytimes.com/news/article.cfm?contentID=141769> (3/24/04).

³² J. Dao, *Two States Trying to Keep Gambling Money at Home*, New York Times at <http://www.nytimes.com/2004/03/22/national/22GAMB.html> (3/22/04).

³³ Tacoma News Tribune, *Washington State Legalizing Online Gambling*, located at www.casinocitytimes.com/news/article.cfm?contentID=141270 (3/01/04).

shows has helped to fuel a card-playing craze around the nation and on many college campuses. Card games such as Texas Hold 'em and other poker games have become "the thing" to do on campus with buy-in games organized by some colleges and student groups drawing hundreds, offering prizes ranging from money to televisions. In New York, the turnout at Binghamton University's free poker tournament exceeded expectations, with approximately 260 players. Online poker companies are also looking to target students with tournaments such as the first college competition at CollegePokerChampionships.com, which began free qualifying rounds in January.³⁴ The new craze is a concern to gambling advocacy groups who worry this will only increase the growing number of problem gamblers. However, for Steve Lipcomb, CEO of the World Poker Tour, there are things worse than college students playing poker. Lipcomb said, "Of all the things you're confronted with in college, this seems to me to be just about the most benign form of entertainment you'll find."³⁵

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."

³⁴ AP, *Poker Draws College Crowds*, CNN.com at <http://www.cnn.com/2004/education/03/31/campus.poker.ap/index.html> (3/31/04).

³⁵ *Id.*