

Warning: Internet Poker May Cause Seizures

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April 15, 2011, which has become uniformly known as “Black Friday,” will be remembered as the day the U.S. Department of Justice (“DOJ”) single-handedly crippled the online poker industry by seizing the domain names of the three largest online poker forums in the world; PokerStars.com, FullTiltPoker.com and AbsolutePoker.com. See, DOJ Press Release, *U.S. Attorney for the Southern District of New York*, “Manhattan U.S. Attorney Charges Principals of Three Largest Internet Poker Companies with Bank Fraud, Illegal Gambling Offenses and Laundering Billions in Illegal Gambling Proceeds” (April 15, 2011). The executives of each site were indicted on bank fraud, wire fraud, money laundering and illegal gambling offenses, including charges under the controversial Unlawful Internet Gambling Enforcement Act (“UIGEA”).

The jurisdictional issues alone demonstrate why this case is of particular significance to the future of online poker. The fact that the indictment involves several foreign defendants begs the question whether anyone will ever see the walls of a U.S. courthouse, given the difficulties associated with international extradition. Should the courts find that the DOJ acted properly, the U.S. would effectually be permitted to utilize its law enforcement muscle to prosecute foreign residents for online activity that is completely legal within their home jurisdiction. Furthermore, this case of first impression may compel U.S. courts to decide if the UIGEA prohibits financial transactions associated with online poker, given the absence of a specific federal law prohibiting that gaming activity. However, due to the government’s focus on the fraud allegations, it is questionable whether the courts will ever be forced to address the merits of the gambling-related charges.

A significant side effect of the recent U.S. crackdown was the seizures; specifically domain name seizures at the registry level. Finally learning to bypass individual registrars – most of whom are located beyond the jurisdiction of U.S. authorities - the DOJ double jumped right to the .com registry to grab control of the online poker domain names.

In previous domain seizure cases, the focus has been on wresting control of the domain from the registrar where the name happened to be registered. For example, in one of the first highly publicized domain name seizure, a private company obtained a default judgment from a U.S. court against Bodog.com, in a patent dispute. One day the company realized that its domain name had been seized by the plaintiff in the case, who executed on the asset by seizing it from an American registrar, to satisfy its judgment. The company was forced to use an alternate domain until resolving the dispute and regaining control over its primary .com domain. See, *1st Technology LLC. v. Bodog Ent. Group SA.*, 2009 WL 426605 (W.D. Wash. 2009).

The state of Kentucky also pursued domain name seizure at the registrar level, but with less success. In *Interactive Media Entertainment & Gaming Association v. Wingate*, 320 S.W.3d 692 (Ky. 2010), Kentucky pursued 141 domain names associated with gambling, by

obtaining a pre-trial seizure order, and emailing that order to various registrars where the domains were registered. Some registrars complied, by transferring the names to the state, while others locked the domains, and still others (primarily the foreign registrars) simply ignored the order as not binding in their jurisdiction. This civil suit is *still* making its way through the judicial channels almost three years after the state's initial seizure order was implemented. The DOJ has learned to avoid issues with foreign registrars, instead choosing to directly seize the valuable domains at the .com registry level. Now that the cat is out of the bag, so to speak, the online gaming industry is considering whether to abandon the iconic .com domain space in favour of less-recognized, but potentially safer, top level domains with registries located outside of the United States. Not surprisingly, within hours of the Black Friday seizures, PokerStars, FullTilt, UB and AbsolutePoker had all relocated to fully operational foreign domains. See, Mitchell, A, "Full Tilt Changes Site to Fulltiltpoker.co.uk," *OnlinePoker.net*, 19 April 2011; Cypra, Dan, "PokerStars Moves to PokerStars.eu," *PokerNewsDaily.com*, 16 April 2011.

Given the increasingly brazen nature of domain name seizure, participants at every level of the industry cannot help but wonder how far U.S. authorities will go in their efforts to exert worldwide jurisdiction and control over online gaming activities. Some speculate that the U.S. is purging the online poker space of potential competitors before finally legalizing the activity. Others say that operators simply took advantage of the America's limbo-like enforcement of online gaming prohibitions and that the free-ride has simply come to an end. Either way, the industry has learned that valuable .com domains are at risk if they are being used in a manner that is considered illegal by the U.S. Attorney's Office. The lack of due process afforded to those who lost control of their domains prior to any finding of guilt is disturbing, and sets a dangerous constitutional precedent.

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