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**REGULATING INTERNET GAMBLING: IS IT  
REALLY A GAME OF CRAPS?**

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# **REGULATING INTERNET GAMBLING: IS IT REALLY A GAME OF CRAPS?**

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# Regulating Internet Gambling: Is It Really a Game of Craps?

By Jay Campbell

## INTRODUCTION

More thirty years ago, Congress created the Commission on the Review of National Policy Toward Gambling to monitor gambling activities across the United States.<sup>1</sup> The Gambling Commission concluded that “gambling is inevitable” and that “no matter what is said or done by advocates or opponents of gambling in all its various forms, it is an activity that is practiced, or tacitly endorsed, by substantial majority of Americans.”<sup>2</sup>

Since the advent of the internet, online gambling activities across the country have proliferated. The first online casino, Interactive Casinos, Inc., opened for business on August 18, 1995.<sup>3</sup> Interactive Casinos offered an array of typical casino games—blackjack, roulette, slots, craps—and internet sports wagering, as well as accessibility to National Indian Lottery.<sup>4</sup> Approximately two years after the debut of Interactive Casinos, the number of online gambling sites had increased to thirty.<sup>5</sup> During this same period, internet gambling increased from 6.9 million to 14.5 million gamblers, with revenues

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<sup>1</sup> Act of Oct. 15, 1970, Pub. L. No. 91-452, 84 Stat. 938 (1970).

<sup>2</sup> Craig Lang, *Internet Gambling: Nevada Logs In*, 22 LOY. L.A. ENT. L.J. 525, 525 (2002) (quoting Comm’n on the Review of Nat’l Policy Toward Gambling, *Gambling in America: Final Report of the Commission on the Review of the National Policy Toward Gambling* (1976)).

<sup>3</sup> See R. Scott Girdwood, *Place Your Bets . . . on the Keyboard: Are Internet Casinos Legal?*, 25 CAMPBELL L. REV. 135, 135 (2002).

<sup>4</sup> See *id.* See also Lang, *supra* note 2, at 533 (noting that online gambling sites generally offer “blackjack, roulette, slots, sports wagering, or other games of chance”).

<sup>5</sup> See Lang, *supra* note 2, at 533. See also Internet Gambling Prohibition Act: Hearing on S. 474 Before the Subcommittee on Technology, Terrorism, and Government Information of the Senate Judiciary Committee, 105th Cong. 47 (1997) (prepared statement of Sue Schneider, Chairman, Interactive Gaming Council of the Interactive Services Association).

more than doubling from \$300 million to \$651 million.<sup>6</sup> Today, it is estimated that about 1,400 websites, all incorporated outside the United States, offer some form of online wagering.<sup>7</sup> The amount of revenue attributable to these websites has been established at around \$1.5 billion worldwide, and experts have estimated that online gambling revenues will increase to \$10.7 billion by 2005.<sup>8</sup>

Along with the recent proliferation of internet gambling are the problems of regulating such activities, certainly not an easy task considering the vastness and the elusiveness of cyberspace. This paper will provide a brief overview of how the legislatures and courts across the country have dealt with the legal headaches borne out of online gambling, as well as presenting some legislative enactments, in an effort to regulate and control gambling activities over the internet, currently in force.

## **I. REGULATION OF INTERNET GAMBLING AT THE FEDERAL LEVEL**

### ***A. Federal Legislative Attempts to Regulate Internet Gambling***

Proponents of online gambling legislations have generally proffered four justifications for such regulations: 1) increasing gambling addiction; 2) accessibility to minors; 3) rising cyber fraud; and 4) loss of state revenues.<sup>9</sup> Tom Bell, the director of Telecommunications & Technology Studies at the Cato Institute, testifying before the National Gambling Impact Study Commission, noted, however, that “[p]ublic deliberation and government action will determine whether legalized Internet gambling comes slowly and painfully or quickly and cleanly.”<sup>10</sup> According to Bell, whether online

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<sup>6</sup> See Girdwood, *supra* note 3, at 136.

<sup>7</sup> See Lang, *supra* note 2, at 533. By the end of 1998, an estimated twenty-two foreign jurisdictions permit some form of regulated and licensed internet gambling operations. *Id.* at 534.

<sup>8</sup> See *id.* at 525.

<sup>9</sup> See Girdwood, *supra* note 3, at 136–40.

<sup>10</sup> Congressional Testimony, *Internet Gambling: Prohibition v. Legalization*, available at <http://www.cato.org/testimony/ct-tb052198.html> (last visited Apr. 23, 2003).

gambling should be legalized or not in the United States is really a dead issue because “[a]ll facts indicate . . . that sooner or later Americans will legally gamble over the internet.”<sup>11</sup> Perhaps his words will prove to be prophetic, since attempts to legislate internet gambling at the federal level have not resulted in the fruition of any new laws or regulations to date.

In 1996, Senator Jon Kyl introduced the first federal legislative attempt at dealing with the regulation of internet gambling.<sup>12</sup> The bill, entitled the Crime Prevention Act of 1995,<sup>13</sup> would have amended the Wire Act<sup>14</sup> so that the act would have been applicable to internet gambling.<sup>15</sup> A year later, Senator Kyl introduced the Internet Gambling Prohibition Act<sup>16</sup> that, like Crime Prevention Act of 1995, would have amended the Wire Act to encompass within its ambit gambling activities over the internet.<sup>17</sup> This too died in Congress.<sup>18</sup>

On November 1, 2001, Representative Bob Goodlatte introduced the Combating Illegal Gambling Reform and Modernization Act<sup>19</sup> which sought “to expand and modernize the prohibition against interstate gambling” by encompassing “internet

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<sup>11</sup> *Id.* Bell presented three factors in support of his position that attempts to prohibit internet gambling will be futile and that the frustration will eventually lead to its legalization: 1) “Internet technology renders prohibition futile;” 2) “Internet offers an instant detour around merely domestic prohibitions; and 3) “consumer demand for Internet gambling and the states’ demand for tax revenue will create enormous political pressure for legalization.” *Id.*

<sup>12</sup> See Jon Patterson, *Internet Gambling and the Banking Industry: An Unsure Bet*, 6 N.C. BANKING INST. 665, 671 (2002).

<sup>13</sup> Crime Prevention Act of 1995, S. 1495, Title XV, 104th Cong. (1996).

<sup>14</sup> 18 U.S.C. § 1084 (1994).

<sup>15</sup> The proposed amendment would have deleted the phrase “wire communication” and replaced it with “wire or electronic communication.” See Patterson, *supra* note 12, at 671. See also Crime Prevention Act of 1995, S. 1495, Title XV, 104th Cong.

<sup>16</sup> Internet Gambling Prohibition Act of 1997, S. 474, 105th Cong. (1998).

<sup>17</sup> See Patterson, *supra* note 12, at 671.

<sup>18</sup> See *id.* One of the strongest opponents to this bill, Representative Chris Canon, feared that the proposed “legislation would make your ISP [internet service providers] the enforcement agency . . . [and] this means they will have to monitor the Internet surfing habits of their customers. I believe this constitutes an invasion of our privacy that must be stopped.” *Id.* at 672 (quoting Eric Ladley, *Gambling Bill Risky for ISP’s*, ISP BUS. NEWS, Oct. 9, 2000, 2000 WL 4348696).

<sup>19</sup> Combating Illegal Gambling Reform and Modernization Act, H.R. 3215, 107th Cong. (2001).

gambling overseas.”<sup>20</sup> This bill, like the previously introduced bills, would amend the Wire Act partly by replacing the words “wire communication,” which is currently in the statute, with the broader “communication.”<sup>21</sup> By removing “wire” from the current statutory language, this proposal seeks to bring within the ambit of the Wire Act “any person engaged in a gambling business” who uses a “communication facility in interstate or foreign commerce.”<sup>22</sup>

### ***B. Judicial Application of Federal Statutes to Internet Gambling***

Although no federal statute has been enacted aimed specifically at internet gambling, it appears that several federal statutes may be applicable to regulate such activities.<sup>23</sup> The Justice Department has stated that online gambling may be illegal under

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<sup>20</sup> Library of Congress, *Bill Summary & Status: Bill Summary & Status for the 107th Congress*, available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d107:1:./temp/~bdNeIu:@@L&summ2=m&/bss/d107query.html> (last visited Apr. 25, 2003).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* A summary of the bill in its most recent form proposes the following:

Prohibits (with exceptions) any person engaged in a gambling business from knowingly: (1) using a communication facility for the transmission in interstate or foreign commerce . . . with respect to any transmission to or from the United States of bets or wagers, of betting information, or of a communication which entitles the recipient to receive money or credit as a result of bets or wagers; or (2) accepting credit, an electronic fund transfer, a check, or the proceeds of other prescribed forms of financial transaction in connection with the transmission of such a communication of information assisting the placing of bets. Sets penalties of up to five years imprisonment and fines for violations.

Some of the exceptions include:

(1) transmissions of information assisting in the placing of bets for use in news reporting or between one State or foreign country where betting or wagering is permitted and either another State or foreign country where such betting on the same event is permitted . . . (2) uses of communication facilities for the transmission of purchases of lottery chances as long as such bets are placed on the premises of a retail outlet that is licensed and open to the public; and (3) transmissions of information assisting in the placing of bets where the individual placing the bet, the gambling business, and processing facility are located in the same State, the State (or Indian tribe) has explicitly authorized such betting, business, and facility[.]

*Id.*

<sup>23</sup> For a general discussion of these federal statutes, *see generally* Girdwood, *supra* note 3, at 140–44; Patterson, *supra* note 12, at 668–71.

“at least four federal statutes.”<sup>24</sup> The four federal statutes are the Wire Act,<sup>25</sup> the Travel Act,<sup>26</sup> the Interstate Transportation of Wagering Paraphernalia Act,<sup>27</sup> and the Professional and Amateur Sports Protection Act.<sup>28</sup> It has been recognized that the Federal Aiding and Abetting Statute<sup>29</sup> may also be applicable to internet gambling.<sup>30</sup> To date, however, only the Wire Act has been tested in federal courts as a means of regulating internet gambling.<sup>31</sup>

A recent federal court case illustrates the application of the Wire Act to online sports gambling. In *United States v. Cohen*,<sup>32</sup> the defendant owned and operated an internet wagering site called World Sports Exchange from the Caribbean island of Antigua where such an operation was legal.<sup>33</sup> This business generated a substantial

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<sup>24</sup> Girdwood, *supra* note 3, at 140 (quoting Harley J. Goldstein, *On-Line Gambling: Down to the Wire?*, 8 MARQ. SPORTS L.J. 1, 18 (1997)).

<sup>25</sup> 18 U.S.C. § 1084 (1994). The statute goes on to say that:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

*Id.* § 1084(a). The statute also has a provision pre-empting any state immunity laws that could hinder or bar criminal prosecution under this statute. *Id.* § 1084(b).

<sup>26</sup> 18 U.S.C. § 1952 (1994) (prohibiting the use of travel or mail in interstate or foreign commerce to “distribute the proceeds of any unlawful activity” or to “otherwise promote, manage, establish, carry on, or facilitate . . . any unlawful activity[.]” defining gambling as an unlawful activity).

<sup>27</sup> 18 U.S.C. § 1953 (1994) (prohibiting anyone other than a common carrier in the usual course of business from carrying or sending in interstate or foreign commerce “any device used . . . or designed for use in bookmaking or wagering pools with respect to a sporting event”).

<sup>28</sup> 28 U.S.C. § 3702 (1994) (prohibiting any governmental entity or any person from sponsoring, promoting, advertising, licensing, or authorizing by law any gambling activity based directly or indirectly on games involving amateur or professional athletes).

<sup>29</sup> 18 U.S.C.A. § 2 (2000) (allowing for those who aid or abet any crime against the United States to be punished as a principal).

<sup>30</sup> *See* Patterson, *supra* note 12, at 670.

<sup>31</sup> *See, e.g., United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001). State courts have, however, applied other federal statutes to internet gambling. *See, e.g., People v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999) (applying the Wire Act, the Travel Act, and the Paraphernalia Act against the operator of a cyberspace casino).

<sup>32</sup> 260 F.3d 68 (2d Cir. 2001).

<sup>33</sup> *Id.* at 70.

amount of revenue from U.S. customers, including taking numerous bets from citizens in New York, where wagering on sporting events was illegal.<sup>34</sup> In rejecting the defendant's various arguments for reversing his criminal conviction, the Second Circuit upheld the district court's interpretation of the statute:

[I]f a person in New York said or signaled that he or she wanted to place a specified bet, and if a person on an internet device or a telephone said or signaled that the bet was accepted, this was the transmission of a bet within the meaning of Section 1084.<sup>35</sup>

Another recent circuit court decision further delineated the scope and application of the Wire Act to internet gambling.

In *In re Mastercard International Inc.*,<sup>36</sup> a class action suit, the plaintiff gamblers brought suit against various credit card companies for honoring debts they had incurred with their credit cards on internet gambling sites, none of the debts involving any type of sports wagering or betting.<sup>37</sup> Although the suit was commenced under the Racketeer Influenced and Corrupt Organization Act ("RICO"),<sup>38</sup> the plaintiffs had to identify a substantive federal crime as a predicate to the invocation of this statute. The plaintiffs cited, *inter alia*, the Wire Act as an underlying predicate.<sup>39</sup> The Fifth Circuit Court of Appeals upheld the district court's ruling that this criminal statute was not applicable as a predicate to RICO because the "plain reading of the statutory language [of the Wire Act]

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<sup>34</sup> *Id.* at 70–71. See also N.Y. CONST. art. I, § 9 (mandating that "no . . . bookmaking, or any other kind of gambling [with the exception of lotteries and horseracing] shall hereafter be authorized or allowed within this state"); N.Y. GEN. OBLIG. LAW § 5-401 (McKinney 2000) (stating that "all wages, bets or stakes, made to depend on any race, or upon any gaming by lot or chance, or upon any lot, change casualty, or unknown or contingent event whatever, shall be unlawful").

<sup>35</sup> *Cohen*, 260 F.3d at 74–75.

<sup>36</sup> 313 F.3d 257 (5th Cir. 2002).

<sup>37</sup> *Id.* at 259–60.

<sup>38</sup> 18 U.S.C. §§ 1961–68 (1994).

<sup>39</sup> *In re Mastercard*, 313 F.3d at 262.

clearly requires that the object of the gambling be a sporting event or contest.’<sup>40</sup> In other words, the federal court dismissed the suit on its narrow interpretation of the Wire Act—the Act only applies to gambling on sporting events or contests.<sup>41</sup>

While both of the aforementioned cases invoked only the Wire Act in their decisions, a New York court, in *People v. World Interactive Gaming Corp.*,<sup>42</sup> invoked the Travel Act and the Paraphernalia Act, as well as the Wire Act, in enjoining the defendants from offering online gambling to the citizens of New York. In applying the federal statutes, the court noted that “[g]ambling conducted via the Internet from New York to Antigua [place of incorporation] is indistinguishable from any other form of gambling since both the Wire Act and the Travel Act apply to the transmission of information into a foreign country.’<sup>43</sup> The court also ruled that the Paraphernalia Act had been violated when the defendants intentionally sent records of gambling activity through international commerce, as well as when they purchased from Florida via mail the computers that were used for online gambling activities.<sup>44</sup>

Although courts at both the federal and state levels have permitted the application of some current federal legislation to internet gambling activities, it is clear that such legislations are antiquated and were not drafted with the internet in mind.<sup>45</sup> One

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<sup>40</sup> *Id.* at 262–63, note 20 (quoting *In re Mastercard International Inc.*, 132 F. Supp. 2d 468, 480 (E.D.La. 2001)).

<sup>41</sup> The plaintiffs could not prove that their internet gambling activities included sports wagering, and because of the court’s narrow interpretation as to the applicability of the statute, their RICO claims were dismissed. *Id.*

<sup>42</sup> 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999).

<sup>43</sup> *Id.* at 852.

<sup>44</sup> *Id.* at 852–53.

<sup>45</sup> For a general discussion of the various federal statutes that may be applicable to online gambling, and the shortfalls thereunder, *see generally* Girdwood, *supra* note 3, at 140–45.

commentator succinctly stated the problem this way: “[T]he application of the Wire Act to Internet gambling is fraught with ambiguity.”<sup>46</sup>

## II. EFFORTS TO REGULATE INTERNET GAMBLING AT THE STATE LEVEL

Some states have already addressed the issue of online gambling through legislative enactments. In Illinois, for example, “[a] person commits [unlawful] gambling when he [k]nowingly establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money . . . by means of the Internet.”<sup>47</sup> The statute also contains a laundry list of exceptions to this rule.<sup>48</sup> Louisiana has also enacted a statute that prohibits “[g]ambling by computer,” which is defined as the “intentional conducting . . . of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit when accessing the Internet[.]”<sup>49</sup> South Dakota, like Illinois and Louisiana, has an explicit statutory provision that bars any individual, with certain exceptions, from “establish[ing] a location or site in [that] state from which to conduct a gambling business on or over the internet or an interactive computer service.”<sup>50</sup>

Although there are currently no specific statutory provisions under either Kansas<sup>51</sup> or Indiana<sup>52</sup> law criminalizing internet gambling, the Attorneys General of each

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<sup>46</sup> A. Gregory Gibbs, *Anchorage: Gaming Capitol of the Pacific Rim*, 17 ALASKA L. REV. 343, 349 (2000).

<sup>47</sup> 720 ILL. COMP. STAT. 5/28-1(a)(12) (West 1995 & Supp. 2001). The statute goes on to state that a violation of this subsection is a “Class A misdemeanor,” and a second or subsequent conviction under this subsection is a “Class 4 felony.” *Id.* 5/28-1(c).

<sup>48</sup> *See id.* 5/28-1(b).

<sup>49</sup> LA. REV. STAT. ANN. § 14:90-3(B) (West 1986 & Supp. 2002). The statute goes on to state that “[w]hoever commits the crime of gambling by computer shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.” *Id.* § 14:90-3(D).

<sup>50</sup> S.D. CODIFIED LAWS § 22-25A-8 (Michie 2001).

<sup>51</sup> Kan. Atty. Gen. Op. No. 96-31 (Mar. 25, 1996), 1996 Kan. AG LEXIS 31 (opining that placing a bet or receiving a bet over the internet violates the state’s criminal gambling laws).

<sup>52</sup> Ind. Atty. Gen. Op. No. 98-8 (July 7, 1998), 1998 Ind. AG LEXIS 5 (concluding that “it is illegal both for persons to gamble over the Internet from Indiana and to provide Internet gambling services to persons in Indiana”).

respective states have issued opinions clearly prohibiting such conduct. The Florida Office of the Attorney General urged Western Union to stop money-transfers from Florida citizens to internet gambling operations overseas, as well as issuing “cease and desist” letters to media outlets advertising online gambling.<sup>53</sup> The Attorney General of the State of New York has also taken an aggressive approach to combating internet gambling.

In 1999, the Attorney General of New York, Eliot Spitzer, brought suit against online gambling operators and successfully enjoined them from operating within or offering to residents of New York gambling over the internet.<sup>54</sup> More recently, in 2002, Spitzer’s office reached an agreement with Citibank, the nation’s largest credit card issuer, to block the use of its credit cards by its customers for online gambling.<sup>55</sup> This agreement followed a similar trend begun by other major credit card issuers to block such transactions.<sup>56</sup> In a more recent development, PayPal, the nation’s leading “e-cash” company, agreed to bar internet gambling operators from utilizing its services to receive money from New York gamblers.<sup>57</sup> This agreement would prohibit individuals and businesses from sending and receiving online payments either through credit cards or electronic transfers from and to bank accounts, at least with PayPal.<sup>58</sup>

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<sup>53</sup> See National Gambling Impact Study Commission, *Casino Gambling: Internet Gambling*, available at <http://www.casino-gambling-reports.com/GamblingStudy/InternetGambling/index.htm> (last visited Apr. 26, 2003).

<sup>54</sup> For a discussion of *People v. World Interactive Gaming Corp.*, see *supra* notes 42–44 and accompanying text.

<sup>55</sup> See Office of New York State Attorney General, *Financial Giant Joins Fight Against Online Gambling: Leading Credit Card Issuer Agrees to Block Key Internet Transactions*, available at [http://www.oag.state.ny.us/press/2002/jun/jun14a\\_02.html](http://www.oag.state.ny.us/press/2002/jun/jun14a_02.html) (last visited Apr. 26, 2003).

<sup>56</sup> See *id.*

<sup>57</sup> See Office of New York State Attorney General, *Agreement Reached with PayPal to Bar New Yorkers from Online Gambling: Campaign Against Illegal Gambling Web Sites in New York Continues*, available at [http://www.oag.state.ny.us/press/2002/jun/jun14a\\_02.html](http://www.oag.state.ny.us/press/2002/jun/jun14a_02.html) (last visited Apr. 26, 2003).

<sup>58</sup> See *id.*

It is interesting to note that although Nevada was one of the first states to prohibit online gambling, this statutory enactment has an exception that, in effect, permits the Nevada Gaming Commission to create regulations that would allow the establishment of online gambling outfits based in Nevada.<sup>59</sup> In light of the current opposition against internet gambling at both the state and federal level, it remains to be seen if Nevada, in fact, becomes to the first state to allow internet gambling.

### CONCLUSION

It is probably beyond dispute that gambling in one form or another has been around since the dawn of civilization. Since the advent of the internet, online gambling has spread like wildfire and most gambling laws, especially at the federal level, seem ill-equipped to deal with this proliferation in cyberspace. Even if “gambling is inevitable,” as the federal Gambling Commission concluded more than thirty years ago, whether internet gambling becomes “an activity that [will be] practiced, or tacitly endorsed, by substantial majority of Americans” remains to be seen. One thing, however, is for certain: the issue of how to best regulate internet gambling will not go away quietly because there’s just too much money at stake.

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<sup>59</sup> See Lang, *supra* note 2, at 542–43.