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DON'T BET ON IT: HOW COMPLYING WITH FEDERAL INTERNET GAMBLING LAW IS NOT ENOUGH

A state-by-state overview of Internet gambling regulation in the United States

Jennifer W. Chiang¹

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ABSTRACT

It is disputed whether the United States has a blanket federal prohibition on Internet gambling. As a result of the lack of cohesive federal oversight, states have passed their own Internet gambling laws which, depending on the state's approach, may regulate making bets online, taking bets online and transferring money between bettor and casino. Some even extend to regulating speech and Internet casino advertisements. For example, card rooms and Indian casinos are prevalent in Washington State, but the state legislature recently made placing a bet over the Internet a Class C felony. This Article will analyze the current framework for Internet gambling regulations, with a brief overview of the federal Unlawful Internet Gambling Enforcement Act of 2006. It will detail the various kinds of regulations utilized at the state level and analyze their interplay with federal law in the United States.

TABLE OF CONTENTS

[Introduction](#)

[Internet casinos and the industry today](#)

[Current regulatory landscape](#)

[Federal legislation may make state regulations moot](#)

[State regulation of Internet gambling](#)

[A. Laws against making bets](#)

[B. Laws against taking bets](#)

[C. Physical presence and accepting bets](#)

[D. State attempts to regulate speech](#)

[E. Attempts by States to Legalize i-Gaming](#)

[Current developments](#)

[Conclusion](#)

[Practice Pointers](#)

INTRODUCTION

<1>Internet gambling is legal in multiple nations,² but in the United States placing a bet with or operating an Internet casino or sports book has never been clearly legal or illegal. Some have called the legal framework that the industry operates in a "grey zone."³ Certain forms of wagers are illegal under

existing federal statutes. For example, the Wire Act prohibits betting on a sporting event over a telecommunication system, which includes the

Washington Journal of Law, Technology & Arts, Vol. 1, Iss. 1 [2004] Art. 6

Internet.⁴ While the federal government maintains that the Wire Act covers all forms of online gambling, the Fifth Circuit Court of Appeals construed the statute to only apply to sports betting.⁵ Currently, placing a bet with an Internet casino is not illegal under federal law.

<2>The uncertain status of Internet gambling under federal law has led some states to use the police powers reserved to them by the 10th Amendment to prohibit online gambling at the local level.⁶ Increasingly, states are passing legislation making it illegal for an Internet casino operator anywhere in the world to take bets from a person located within the state.⁷ Other states make it a felony to place a bet from within the state.⁸ States have the ability to legalize and encourage the development of Internet gambling or "i-gaming"⁹ within their borders. Several states have attempted to develop their own i-gaming policies; however, the various jurisdictional issues make it a challenge to legally enforce those laws.¹⁰

<3>This Article briefly details the rise of online gambling and corresponding attempts to apply existing federal legislation, enacted prior to the advent of the World Wide Web, to Internet-based casinos. It then focuses on the issues facing both federal and state regulations such as jurisdiction, the dormant commerce clause, and federal preemption. This Article also provides an overview of current state statutes regulating Internet gambling.

Internet casinos and the industry today

<4>The first i-casino opened in August 1995.¹¹ By 1996 there were an estimated 15 i-gaming sites that accepted wagers,¹² and by the next year, approximately 200.¹³ Shortly after the creation of the i-casinos, Internet sports book sites, such as the World Sports Exchange, went online and were fully operational by 1997.¹⁴ By 2002, the industry had grown to 1,800 i-casinos, lotteries, bingo games, and sports books, and estimates place the total number between 2,000 and 2,500 by 2006.¹⁵

<5>The i-gaming model enjoys success as a legal activity in many parts of the world. More than 70 foreign nations license or permit some form of i-gaming.¹⁶ Americans are responsible for approximately half of the \$12 to \$15.5 billion wagered annually via the Internet.¹⁷ The parent companies of i-casinos are publicly traded on the London Stock Exchange,¹⁸ invested in heavily by leading global investment firms and have revenues in the hundreds of millions.¹⁹ Morgan Stanley Securities Ltd. and Fidelity Management have been some of the largest investors.²⁰

<6>Most i-gaming companies operate offshore in countries that have legalized the business, such as Gibraltar, Alderney, the Isle of Man and Antigua.²¹ However, when gambling first went online, the casinos weren't all offshore unknowns. In 2001, MGM Mirage opened an i-casino on the Isle of Man.²² In order to ensure the casino preserved its gaming license in Nevada, the site only permitted visitors from six nations to make real money wagers.²³ MGM hoped to demonstrate that online gambling could be regulated and profitable with a legitimate enterprise backing it.²⁴ However, due to the political

climate and hostility towards i-gaming, the venture shut down in 2003.²⁵ Therefore, instead of money flowing from United States residents to United States companies and ultimately back to the American economy, the structure currently ensures that all i-gaming proceeds, and the associated taxation revenue from it, flows offshore to foreign markets. Just in tax revenues, regulation of i-gaming could bring in an estimated \$3.3 billion annually for the federal government, and \$1 billion for the states.²⁶

CURRENT REGULATORY LANDSCAPE

<7> Certain forms of gambling are regulated by the federal government through the constitutional grant of power in Article One, §8, the commerce clause of the United States Constitution. For example, federal law regulates gambling acts that use the instrumentalities of interstate commerce or involve financial institutions. The Wire Act of 1961 is often promulgated as a ban on i-gaming.²⁷ While the U.S. Department of Justice has used the Wire Act as the basis for declaring all Internet gambling as illegal, the Fifth Circuit Court of Appeals interpreted the Wire Act to cover only sporting events, leaving other casino games like poker and blackjack in a “grey area.”²⁸

<8> Obtaining jurisdiction over the casinos and their operators is a key issue for regulation of i-casinos.²⁹ A casino that operates in a state can be sued in that state, as well as any casino that has been incorporated in the state.³⁰ However, i-casinos are exclusively located outside of the United States.³¹ For individuals associated with i-casinos, personal service in the state is the biggest risk in a civil suit.³² If the casino and its operators are located out of state, a traditional “minimum contacts” analysis³³ must occur based on the long-arm statute of the state in question.³⁴

<9> Another issue is whether state statutes regulating i-gaming violate the dormant commerce clause.³⁵ As for physical casinos, state laws range from complete prohibition on gambling — for example Utah bans all forms of gambling including commercial, tribal and charitable³⁶ — to the extremely permissive Nevada.

<10> The dormant commerce clause prohibits “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.”³⁷ For example, where laws allowed in-state wineries to ship directly to consumers, but out-of-state wineries were prohibited from doing so, the U.S. Supreme Court struck down the laws as a violation of the dormant commerce clause because the laws discriminated against out of state wineries.³⁸ An example of a gambling prohibition that potentially violates the dormant commerce clause is pari-mutual horse wagering. The states that regulate this form of quasi-online gambling are open to a dormant commerce clause challenge because they tend to give in-state operators favorable treatment by blocking outside actors.

Federal legislation may make state regulations moot

<11> States have been less successful in attempting to regulate the payment systems involved in the transfer of money between bettor and i-casino. However, with the passage of the Unlawful Internet Gambling Prohibition Act of 2006, Federal law now most likely makes state attempts to regulate i-

gaming moot.

Washington Journal of Law, Technology & Arts, Vol. 4, Iss. 1 [2007], Art. 6

<12>After ten years³⁹ of attempting to pass federal legislation banning Internet gambling, at two o'clock in the morning on the last day of the 2006 congressional session, the Unlawful Internet Gambling Act of 2006 (the "UIGA")⁴⁰ was passed as a part of the Safe Accountability for Every Port Act of 2006 (the "SAFE Port Act").⁴¹ The bill prohibits anyone engaged in the business of betting or wagering from accepting, in connection with *unlawful* Internet gambling, credit, an electronic fund transfer, a check or other payment drawn from a bank or any other financial transaction that involves a financial institution as the payor or intermediary.⁴² It requires that by July 2007, the Federal Reserve, in connection with the Attorney General, will prescribe regulations requiring the payment systems to identify and block the prohibited transactions.⁴³ The legislation has been attacked by the industry as unworkable and deceptive in its overnight enactment.⁴⁴ One major criticism of the bill goes to the definition of "unlawful Internet gambling."⁴⁵ The statute defines it as "to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law."⁴⁶ While the original bill clarified the Wire Act to indicate that it shall apply to all i-gaming, the version as passed did not contain any provision clarifying what is unlawful under federal law.

<13>The only state that has passed legislation regarding financing is Oregon.⁴⁷ Oregon's i-gaming statute deals with how money is transferred between parties. Anyone engaged in Internet gambling may not knowingly accept a credit payment from another engaged in "unlawful gambling using the Internet."⁴⁸ The statute includes not merely credit payments via a credit card, but also electronic funds transfer or a check or other financial transaction that involves an institution as a payer on behalf of that person.⁴⁹ However, the statute does not define what "unlawful gambling using the Internet" is in reference to. Because no other state law regulates i-gaming, the construction of Oregon's statute could mean that this statute is saying gambling using the Internet is unlawful. Another possible statutory reading is that only if the Internet gambling is unlawful based on some other statute, such as Federal law, does Oregon's statute take effect.

<14>While the long-term impact of the UIGA is difficult to predict, its immediate force crippled some i-casinos and caused many legitimate organizations to stop accepting bets originating in the United States.⁵⁰ In the two weeks after the bill was passed, the value of stock in publicly traded i-gaming companies on the London Stock Exchange fell by \$7.6 billion dollars.⁵¹

<15>In April 2007, Democratic Representative Barney Frank of Massachusetts introduced a bill to repeal the UIGA.⁵² The bill contained provisions for licensing and regulating i-casinos.⁵³ However, at the time he introduced it and as of May 4, 2007, he conceded it was unlikely to have enough support to pass.⁵⁴

STATE REGULATION OF INTERNET GAMBLING

Eight states specifically regulate or prohibit i-gaming.⁵⁵ In the absence

of clear, enforceable federal legislation banning all forms of i-gaming, these state laws regulating or prohibiting i-gaming create a lack of uniformity within the United States. Unlike China, the United States does not block or track Internet access.⁵⁶ Without such restrictions on Internet access, it is all but impossible to regulate i-gaming by actually blocking an American from visiting certain websites.⁵⁷ Thus, most state laws fit into the following four categories: laws against making bets, laws against taking bets, laws against financing of i-gambling wagers, and laws against advertising and promoting Internet gambling. The most common kinds of state regulation are laws against taking bets, and, to a lesser extent, laws against making bets primarily for technological reasons. Laws dealing with payment systems are almost exclusively federal because of the more complex nature of banking regulation and interstate commerce.

A. Laws against making bets

<17>Some states have chosen to regulate the actor — a person physically present in the state - in order to restrict i-gaming. This is considered one of the toughest methods to actually enforce and is used mainly as a deterrent.⁵⁸ Enforcement is impracticable due to the prohibitive expense in time, money, and resources to track sites visited by individual users.⁵⁹

<18>The most recent state to legislate i-gaming is Washington. In June 2006, the state legislature made placing a bet over the Internet from Washington State a felony, making it one of the most restrictive states in prohibiting users, rather than operators, or conduct.⁶⁰ The governor of Washington recently signed S.B. 6613.⁶¹ This act purports to clarify an existing statute by stating explicitly that wagering via the Internet is illegal in Washington and increases the classification from a misdemeanor to a Class C felony, making it one of the few states that make it illegal for citizens to make bets online.⁶² Those convicted of a Class C felony in Washington face a maximum penalty of five years in prison and a \$10,000 fine.⁶³

<19>While the law may be the most restrictive, the members of Washington's executive branch who lobbied for the law acknowledge its shortcomings and problems associated with any enforcement attempt. Although the Washington State Gambling Commission, charged with regulating all gambling in the typically gambling-friendly state, said in a press release, "[a]s for players, gambling on the Internet...runs a risk of a felony conviction" it has indicated there are no plans for an active campaign against regular players.⁶⁴ The Commission has said that if a player's name appears in an operator's seized records, it will likely send the player a warning letter, notifying the player of the serious legal consequences of gambling.⁶⁵ If the Gambling Commission observes a player's name appear again on an operator's list, the player may be charged with a felony.⁶⁶

<20>Perhaps more importantly, by making simple betting a state felony, the federal anti-gambling statute now applies.⁶⁷ The Racketeer Influenced and Corrupt Organizations Act (RICO) makes it a federal crime to commit "any act ... involving ... gambling ... which is chargeable under State law and punishable by imprisonment for more than one year." Without passing specific i-gaming regulations, the federal government is able to possibly use state laws as the basis for a RICO prosecution.

<21> Illinois makes it a crime "to make a wager upon the result of any game, contest, political nomination, appointment, or election by means of the Internet."⁶⁸ Unlike Washington, the statute does not specifically include Internet casinos or poker and the first conviction results in a Class A misdemeanor.⁶⁹

B. Laws against taking bets

<22> Other states have chosen to pursue the i-gaming companies that are profiting from wagers by U.S. residents. This method can be more practical in terms of enforcement, however there are jurisdictional issues, as detailed above, when trying to enforce the laws. Because a business needs to be accessible to succeed, it is much more traceable than an individual user. However, because of this, most operators have avoided running their businesses from within the United States so that they are out of reach of these state laws.

<23> Louisiana prohibits anyone in the world from accepting a bet via the Internet from someone physically located in Louisiana, and it is the first state to attempt to enforce, via an arrest, this kind of law.⁷⁰ Louisiana bans the "intentional conducting, or directly assisting in the conducting as a business 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."⁷¹ In addition, it has a more severe penalty for those who design and maintain the websites.⁷² However, unlike other states that have laws on the books, but no criminal prosecutions, Louisiana became the first state to arrest a casino operator on criminal charges.⁷³ On Sept. 6, 2006, upon arrival at Kennedy Airport in New York, Sportingbet Chairman Peter Dicks was arrested on a warrant issued by Louisiana state police. The warrant was issued for gambling by computer, a felony punishable by five years in prison and a \$20,000 fine.⁷⁴ Sportingbet, a publicly traded company, offers online sports betting. The Louisiana State police said that they have been investigating websites that take bets from Louisiana residents since January 2006.⁷⁵

<24> At the time of the arrest, the industry's attention was put on state regulations, as it appeared most i-gaming corporations had focused on protecting their businesses from federal regulations. At the time of the arrest, the head of the Louisiana Police Gambling Enforcement division announced that warrants had been issued for three others connected to Sportingbet.⁷⁶ Since then, it has been reported that Louisiana has obtained sealed warrants against at least 50 people who work for online gambling companies.⁷⁷

<25> Dicks was fortunate because New York only permits extradition if the accused person was physically present where he is accused of breaking the law.⁷⁸ Because Dicks hadn't physically been to Louisiana in decades and the charges related to his actions in Great Britain, the extradition order was not signed, and in late September, Dicks was allowed to return home.⁷⁹ Since the arrest, Sportingbet's board has instructed its executives not to travel to the United States.⁸⁰ While no one has yet been convicted of violating the statute, it appears that Louisiana has its sights set on arresting those who accept bets that originate from within the state.

jurisdictional provision, providing that “[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.”⁸¹

<27> Currently, Nevada prohibits accepting wagers via the Internet by making all bets accepted or received from a person located within the state a violation of Nevada gaming laws.⁸² The statute has carve-outs for certain license-holding entities.⁸³

C. Physical presence and accepting bets

<28> South Dakota prohibits the physical presence of an Internet casino business within its borders.⁸⁴ It is a Class 6 felony, punishable by up to two years in prison,⁸⁵ to “establish a location or site in [the] state from which to conduct a gambling business on or over the Internet.”⁸⁶ It is also prohibited for a person engaged in a “gambling business” to use the Internet to make a wager.⁸⁷ Gamblers making bets from computers within South Dakota are exempt from this law, as “gambling business” is defined as “a business that is conducted at a gambling establishment or involves the placing, receiving, or making of bets.”⁸⁸ Because the law applies to both those who initiate a bet from South Dakota or receive a bet from someone in South Dakota, operators of Internet casino sites would be advised to avoid doing business with those in South Dakota.

<29> Montana makes it a misdemeanor to operate an illegal gambling enterprise.⁸⁹ An illegal gambling enterprise includes internet gambling.⁹⁰ Internet gambling is defined as “the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.”⁹¹

D. State attempts to regulate speech

<30> Some state regulations, rather than regulating betting or payment systems, aim to cut off the flow of information about online gambling. For example, the recently passed Washington State statute not only prohibits Internet gambling as described in above, but also makes it illegal to communicate about Internet gambling.⁹² The statute prohibits “[transmitting] or [receiving] gambling information by ... the Internet.”⁹³ Gambling information is defined as “any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling.”⁹⁴ However, there is a carve-out clause in the Washington law, which provides that newspapers, radio, or TV stations licensed by the FCC are not subject to the law. At the time the statute was passed, a consumer reported that he received a letter that his favorite gambling related magazines

could no longer be delivered to him because of the law.

Washington Journal of Law, Technology & Arts, Vol. 4, Iss. 1 [2007], Art. 6

<31>The Washington State statute has First Amendment commercial speech implications that are more complex than this Article can do justice. As University of Washington School of Law Professor Stewart Jay told the Seattle Post Intelligencer, "[i]f the P-I puts it on the Internet, it's legal. If Joe Blow puts it on the Internet, it's illegal. It's a very crude distinction that's being made here. When you discriminate between forms of speech and providers, the government has to provide a compelling reason."⁹⁶ If an advertiser for an online gaming site, or a magazine is affected by this law, there are valid First Amendment commercial speech issues that the attorney should raise. Several articles, while not covering the Washington law, provide a good overview of the First Amendment issues in online gambling regulation.⁹⁷

E. Attempts by States to Legalize i-Gaming

<32>Nevada passed a bill in 2001 that would have allowed those with a non-restricted gaming license who are physically present in Nevada to obtain an interactive gaming license.⁹⁸ The license allows these casinos to accept bets via the Internet from Nevada citizens.

<33>However, no casino was granted a license because part of the bill required that the Nevada Gaming Commission (NGC) determine whether the license would comply with federal law.⁹⁹ The U.S. Department of Justice issued a letter stating that it considered Internet gambling a violation of federal law and Nevada stopped the push to regulate Internet gambling.¹⁰⁰

<34>Rather than ban i-gaming, North Dakota considered passing legislation to legalize, license, tax and regulate Internet poker.¹⁰¹ The Internet Poker Bill of 2001 would have allowed entities in North Dakota to operate online poker rooms, and a concurrent resolution, if approved by voters, would have amended the state constitution to make Internet poker legal.¹⁰² Like Nevada, after receiving a letter from the Department of Justice, the Senate voted down the regulation, even though it had been passed in the House.¹⁰³

CURRENT DEVELOPMENTS

<35>The boundary-less web of the Internet is not yet in sync with the multitude of restrictions on i-gaming, leaving it an industry in flux. Some nations have shown a desire to regulate the industry.¹⁰⁴ To this end, other nations have come together to discuss an international agreement for the regulation of i-gaming.¹⁰⁵

<36>In March 2007, the World Trade Organization held that the UIGA is illegal, rejecting a U.S. appeal from an earlier ruling.¹⁰⁶ As a result, Antigua and Barbuda, the complaining countries, may seek sanctions by withdrawing protection for U.S. trademarks and copyrights.¹⁰⁷ Since 2000, the income of the 32 registered casinos in the two countries has fallen from \$1 billion to \$130 million.

<37>Meanwhile, U.S. bettors are losing the opportunity to gamble online as many gambling companies, in the wake of arrests and profit seizures, have

simply stopped accepting bets originating from a U.S. IP address.¹⁰⁸ As a result, annual i-gaming revenue has decreased by half since the UICGA passed.¹⁰⁹

CONCLUSION

<38>The global Internet gambling industry is in flux. Regulations vary state by state and new federal regulations are about to go into effect. Anyone involved in running, promoting, or using i-gaming sites must consider carefully the risk in traveling to the United States. While those involved in such activities may be in compliance with one state's laws, they may be simultaneously violating another state's laws, potentially subjecting them to arrest warrants and extradition. Those in the Internet gambling industry, even peripherally – e.g. magazine publishers - must stay abreast of the current legal developments to ensure compliance with US law.

PRACTICE POINTERS

- While Internet casinos are not clearly illegal under federal law, operators who take bets from Americans or people physically located in the United States should carefully examine potential criminal liability before traveling to or through the United States.¹¹⁰
- Those who are physically present in the United States and wish to gamble online should check with the applicable state law before placing their bets.
- Offshore operators should look to state law as well as federal law to determine potential criminal liability.

[<< Top](#)

Footnotes

1. Jennifer W. Chiang, University of Washington School of Law, Class of 2008. Thank you to Professor Jane Winn for all of her helpful insights and I. Nelson Rose for reviewing and commenting on this article.
2. See I. NELSON ROSE & MARTIN D. OWENS, INTERNET GAMING LAW 80-85 (2005). For example, the French and German national lotteries are available online to the respective nationals. Lichtenstein allows its national lottery to be played worldwide. The U.S. Virgin Islands has adopted a regulatory framework like Australia and requires computer operating and control systems to protect security, audit trails and keeps records of wagers. U.S.V.I. Internet Gaming and Gambling Regulations §§605-1.3, 605-1.4, 605-1.3 (2002).
3. ROSE AND OWENS, *supra* note 2, at 2-3.
4. The Wire Act, 18 U.S.C. § 1084 (2006).
5. See ROSE AND OWENS, *supra* note 2, at 5. The Wire Act was created to prevent bookies from accepting bets over the telephone. In *In Re MasterCard International Inc.*, the court held that the Wire Act

only applies to sports betting and not the broader category of Internet-based casinos. 313 F.3d 257 (5th Cir. 2002).

6. See ROSE AND OWENS, *supra* note 2, at 100-101.
7. See, e.g., S.D. CODIFIED LAWS § 22-25A-7 (2002); 720 ILL. COMP. STAT § 5/28-1 (1999); LA. REV. STAT. § 14:90.3 (1997).
8. See, e.g., WASH. REV. CODE § 9.46.240 (2006).
9. "I-gaming" is an industry term for "internet gambling."
10. See Joel R. Reidenberg, *Technology and Internet Jurisdiction*, 153 U. PA. L. REV. 1951 (2005). See also John M. Norwood, *Gaming Law and Technology: Gambling in the Twenty-First Century: Judicial Resolution of Current Issues*, 74 MISS. L.J. 779, 788 (2005) (Discussing jurisdiction and conflicts of law); Shekel Masoud, *The Offshore Quandary: The Impact of Domestic Regulation on Licensed Offshore Gambling Companies*, 25 WHITTIER L. REV. 989, 1004-08 (2004).
11. Am. Gaming Ass'n, *Industry Information Fact Sheets: Internet Gambling*, http://americangaming.org/Industry/factsheets/issues_detail.cfv?id=17 (last visited Apr. 8, 2007).
12. DAVID G. SCHWARTZ, *CUTTING THE WIRE: GAMBLING PROHIBITION AND THE INTERNET*, 184 (2005). There were 40 i-gaming sites, of which only 15 accepted wagers. The rest were still developing payment systems at the time. For information on the early years of development, see James Sterngold, *Virtual Casino is Coming, but Regulation is Still a Big Question*, N.Y. TIMES, Oct. 28, 1996, at D1.
13. SCHWARTZ, *supra* note 12, at 184.
14. Joseph J. McBurney, Note & Comment, *To Regulate or to Prohibit: An Analysis of the Internet Gambling Industry and the Need of a Decision on the Industry's Future in the United States*, 21 CONN. J. INT'L L. 337, 340 (2006).
15. SCHWARTZ, *supra* note 12, at 184.
16. ROSE AND OWENS, *supra* note 2, at 82
17. Estimates range from \$12 billion to \$15.5 billion annually. See, e.g., Jonathan Weisman, *Internet Gambling, Port Deals Reached*, Wash. Post, Sept. 30, 2006, at A8, estimating \$12 billion; Edward Kim, *President Signs Bill Aimed at Limiting Online Gambling*, PBS: THE ONLINE NEWS HOUR (Oct. 13, 2006), http://www.pbs.org/newshour/updates/law/july-dec06/gambling_10-13.html (last visited Apr. 8, 2007), citing Nottingham Business School estimate of \$15.5 billion in wagers annually with U.S. gamblers comprising half of that amount.
18. See Joseph Kelly et. al., *The Global E-Gaming Industry: Why London, Why Now?*, 9 GAMING L. REV. 572 (2005).
19. Matt Richtel & Heather Timmons, *Web Casinos Becoming a Riskier Bet for Investors*, N.Y. TIMES, Aug. 21, 2006, at C1. Sportingbet reported operating profit of \$193 million for the fiscal year ending in July 2006, two-thirds of the revenue came from those betting in

the United States. PartyGaming, operator of PartyPoker.com and one of the top ten fastest growing Web sites, had second-quarter revenue of \$319.3 million for its second quarter of 2006.

20. Fidelity recently sold its shares in BetOnSports, worth about \$363 million or 14.1 percent of the company's outstanding shares. Fidelity sold in the wake of federal indictments of BetOnSports' executives. During the fallout shares plummeted and institutional investors started to distance themselves from these stocks. *Id.* at C1. See also Kelly, *supra* note 19. Fidelity shares saw the value of their holdings decline by 270 million pounds in the two days following the passage of federal laws regulating the payment systems used in gambling over the Internet. Merrill Lynch is reported to have lost 36 million pounds on i-gaming stocks during the same period. Dominic White, *Chips are Down for Fidelity as Online Gambling Ban Bites*, THE DAILY TELEGRAPH, Oct. 4, 2006, available at <http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2006/10/04/cngamble04.xml> (last visited April 17, 2007)
21. Kelly, *supra* note 18, at 572.
22. McBurney, *supra* note 14, at 344-45.
23. SCHWARTZ, *supra* note 12, at 185.
24. *Id.*
25. *Id.*
26. Kim, *supra* note 17, at n. 18.
27. See 18 U.S.C. § 1084(a) ("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...or imprisoned...not more than two years, or both.")
28. MasterCard, *supra* note 5, at 480. See Anne Lidner, *Comment: First Amendment as a Last Resort: The Internet Gambling Industry's Bid to Advertise in the United States*, 50 St. Louis L. J. 1289, 1289-90 (2006).
29. This is a key issue because of the strong presumption that the laws do not reach beyond the border of the state. See generally 36 Am. Jur. 2d Foreign Corporations § 437; Laurie P. Cohen, *Internet's Ubiquity Multiplies Venues to Try Web Crimes*, THE WALL STREET JOURNAL, Feb. 12, 2007 at B1.
30. See 32 Am. Jur. 2d Federal Courts § 346.
31. Kelly, *supra* note 18, at 572.
32. ROSE AND OWENS, *supra* note 2, at 101.
33. See *International Shoe v. Washington*, 326 U.S. 310 (1945)

(minimum contacts required such that the traditional notions of fair play and substantial justice are not offended)! See also *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987) (limited personal jurisdiction to when the defendant purposely avails himself of the forum).

34. See 19 Am. Jur. 2d Corporations § 1881.
35. See Linda J. Shorey et. al., *Do State Bans on Internet Gambling Violate the Dormant Commerce Clause?*, 10 GAMING L. REV. 240 (2006).
36. UTAH CODE ANN. § 76-10-1102 (2006).
37. *Granholm v. Heald*, 544 U.S. 460, 461 (2005) (citing *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.*, 511 U.S. 93, 99 (1994)).
38. *Id.*
39. The first bill was the Computer Gambling Prevention Act of 1996, H.R. 3526, 104th Cong. (1996).
40. SAFE Port Act, Pub. L. No. 109-347, § 801 (2006).
41. SAFE Port Act, Pub. L. No. 109-347.
42. *Id.* at § 5363.
43. *Id.* at § 5364.
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46. *Id.* at § 5362(10).
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52. Peter Kaplan, *Bill Aims to Repeal Web Gambling Ban*, REUTERS, <http://www.reuters.com/article/internetNews/idUSN2648196320070427?pageNumber=1> (last accessed May 24, 2007)
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56. ROSE AND OWENS, *supra* note 2, at 72-73.
57. *Id.*
58. See ROSE AND OWENS, *supra* note 2, at 72-73.
59. *Id.* at 73.
60. WASH. REV. CODE § 9.46.240 (2006).
61. S.B. 6613 (Wash. 2006).
62. *Id.*
63. WASH. REV. CODE § 9A.20.021 (2006).
64. *Media Release: Internet Gambling*, WASHINGTON STATE GAMBLING COMMISSION, (June 21, 2006)
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65. *Id.*
66. *Id.*
67. I. Nelson Rose, *Washington State Makes it a Felony to Play Online*, 10 GAMING L. REV. 339 (2006).
68. 720 ILL. COMP. STAT. 5/28-1(a)(12) (2006).
69. 720 ILL. COMP. STAT. 5/28-1(c).
70. LA. REV. STAT. ANN. § 14:90.3 (2006).
71. *Id.* at § 3(b).
72. *Id.* at § 3(e). "Whoever designs, develops, manages, supervises, maintains, provides, or produces any computer services, computer system, computer network, computer software, or any server providing a Home Page, Web Site, or any other product accessing the Internet, World Wide Web, or any part thereof offering to any client for the primary purpose of the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit shall be fined not more than twenty thousand dollars, or imprisoned with or without hard labor, for not more than five years, or both."
73. Matt Richtel & Thomas Crampton, *Arrest of Second Major Online Gambling Figure is a First for State Officials*, N.Y. TIMES, Sept. 8, 2006, at C1.
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Washington Journal of Law, Technology & Arts, Vol. 4, Iss. 1 [2007], Art. 6

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83. *Id* at § 094 (carve-outs including sports books, pari-mutual wagering, mobile gaming and other forms of licensed gaming).
84. S.D. CODIFIED LAWS § 22-25A-8 (2006).
85. S.D. CODIFIED LAWS § 22-6-1 (2006).
86. S.D. CODIFIED LAWS § 22-25A-8 (2006).
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88. S.D. CODIFIED LAWS § 22-25A-2 (2006).
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90. *Id.* at § 112(17)(a).
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97. For an overview of advertising, see Megan E. Frese, *Rolling the Dice: Are Online Gambling Advertisers "Aiding and Abetting" Criminal Activity or Exercising First Amendment-Protected Commercial Speech?*, 15 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 547 (2005). See also, Ann Lindner, Comment, *First Amendment as a Last Resort: The Internet Gambling Industry's Bid to Advertise in the United States*, 50 ST. LOUIS L.J. 1289 (2006).

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Chiang: Don't Bet on It: How Complying with Federal Internet Gambling Law

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108. Hans Kundnani, *More Web Gambling Firms Suspend US Operations*, THE GUARDIAN, Oct. 10, 2006, available at <http://business.guardian.co.uk/story/0,,1891913,00.html> (last accessed May 5, 2007).
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110. The United States does not allow trials in absentia. Avoiding travel to the United States prevents physical presence for a trial. See 21A AM. JUR. 2D CRIMINAL LAW § 1131 (2006).