

**ARTICLES**  
**Online Sports Gambling-  
Regulation or Prohibition?**

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Gambling has become a ubiquitous industry. Americans legally wagered half a trillion dollars in 1995, and the American gaming industry earned profits of \$44.4 billion, an amount that exceeds the net revenue from movies, music, and sports entertainment combined (Kailus, 1999). With the explosive growth of online gambling opportunities, discussion regarding gambling has taken on new dimensions. Discussion often focuses on benefits associated with gambling prohibition in comparison to benefits associated with gambling regulation.

Gambling on sports poses additional concerns beyond general gambling-related issues. Specifically, sports gambling is feared for its potential to threaten the integrity of sporting contests while also promulgating addictive behaviors among society and youth in particular. The American response to online sports gambling is mixed. The general public appears to support most gambling activities, but sports governing bodies are opposed to both gambling on sport and online gambling in general.

Recently, both Internet gambling and sports gambling have been the subject of proposed federal legislation, with contentious debate as to whether or not they should be prohibited. Part I of this paper documents the increase in gambling over the past 25 years. Part II identifies five reasons for the phenomenal growth of the gambling industry. Part III provides arguments both for and against the legalization of gambling. Part IV describes existing legislation applicable to gambling activities. Part V discusses judicial trends in interpreting existing gambling laws in the new context of Internet gambling. Part VI presents two pieces of proposed federal legislation that would affect Internet sports gambling, and describes suggested enforcement strategies. The paper concludes

with a recommendation that online sports gambling be prohibited by federal law.

## I. GAMBLING: A GROWING INDUSTRY

Gambling represents big business, reflecting one of the nation's fastest growing industries (Goldin, 1999). "Commercial casinos on land and rivers, tribal casinos, state-run lotteries, pari-mutuel wagering on dog and horse racing and jai-alai, sports betting, charitable gambling, Internet gambling, and stand-alone electronic gambling devices such as video poker and keno" represent the wide spectrum of gambling opportunities now available throughout the United States (Summary of gambling, 1999, p.1). The growth of the gambling industry is evident when comparing gambling prevalence in 1976 versus 1999. In 1976, 13 states had lotteries, two states allowed off-track wagering, and Nevada was the only state with a casino. In 1999, legalized gambling exists in some form in every state except Utah, Tennessee, and Hawaii. Thirty-seven states have lotteries and the majority of states offer off-track betting opportunities (National Gambling Impact Study Commission (NGISC), 1999). In Nevada there are 142 legal sports bookmaking operations (Brisendine, 1999). Sport wagering was estimated to reflect a \$34 billion industry in 1995 and a \$100 billion industry in 1996 (McGraw, 1997). In Las Vegas alone, \$2.5 billion was wagered on sports in 1996 (McGraw). It is estimated that \$80 million was legally wagered in Las Vegas on the 1997 March Madness tournament and \$78 million was legally wagered on the Super Bowl (Dobie, 1998).

Additional evidence of the increased popularity of gambling may be found by examining data on personal gambling expenditures. In 1975, a national survey on gambling and related issues was conducted by the National Opinion Research Center, Gemini Research, The Lewin Group, and Christiansen/Cummings Associates (hereafter referred to as "NORC survey"). Results in 1975 indicated that 63% of the survey respondents had gambled at least once in their lifetime. The survey was repeated again in 1998. In 1998, the number of survey respondents indicating they had ever gambled increased to 86%. The 1998 NORC survey also revealed that gambling expenditures had increased to .75% of personal income in 1988 compared to .30% of personal income in 1976 (NGISC, 1999). As this data shows, the gambling industry has experienced, and continues to experience, phenomenal growth.

## II. FACTORS CONTRIBUTING TO THE POPULARITY OF GAMBLING

Five primary reasons contribute to the rapid expansion of the gambling industry. First, and perhaps most importantly, the social perception of gambling has changed considerably. Once gambling was considered a vice, but it is now viewed as a socially acceptable leisure activity. Government endorsement of state lotteries to raise monies needed for infrastructure and education has contributed to the legitimacy of gambling activity (Montpas, 1996). Many young adults have no recollection of the days when gambling was widely considered immoral. Roger Svendsen, director of the Minnesota Compulsive Gambling Hot-line stated that, "We're working with the first generation that has been raised when gambling has been seen as a positive thing" (Udovicic, 1998, p.404). By 1996, 92% of Americans agreed that casino gambling was acceptable entertainment (Goldin, 1999). Even illegal gambling is gaining popular approval. As explained by McGraw (1997, p.50), "Most people tend to regard laying a \$100 illegal bet on a college basketball team as little different from plunking down \$10 on the state lottery or picking The English Patient to come in as Best Picture in the office Oscar pool."

Second, Goldin (1999) identifies the Indian Gaming Regulatory Act (IGRA) of 1988 as a primary catalyst for gambling expansion. According to the IGRA, "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State, which does not, as a matter of criminal law and public policy, prohibit such gaming activity" (25 U.S.C. § 2701(5)). Originally intended to limit Indian reservation gambling to the types of gambling already permitted within a given state, the spirit of the IGRA has been expanded by subsequent federal court interpretations (Goldin, 1999). Section 2710(d) (1)(B) legalized high-stakes commercial gambling on Indian reservations if a state otherwise allowed that type of gambling "for any purpose by any person, organization, or entity." According to Goldin (1999, p.4), the federal courts expansively interpreted "any purpose" to include forms of charitable gambling so that now, "if a state so much as allows fire stations or school districts to conduct low-stakes roulette at 'Las Vegas' charity nights, then under IGRA an Indian tribe also can offer roulette on its reservations." Revenue generating possibilities, coupled with gambling's increased societal acceptance and consumer demand, has enabled Indian reservations to capitalize on opportunities presented by gambling activities

Due to a desire to compete for state revenues, the resulting presence of casinos on Indian reservations has spurred public acceptance of casinos on non-tribal lands and in neighboring states lacking tribal casinos. Prior to the IGRA's passage in 1988, an estimated 40 states attempted to pass legislation legalizing casinos; however, each of those attempts failed (Goldin, 1999). Goldin also reported that according to a 1989 Gallup Poll, only 55% of Americans approved of casino gambling as a revenue-raising mechanism for the government prior to the passage of the IGRA; but, since the passage of the IGRA in 1988, 25 states have been successful in opening casinos.

A third factor affecting the growth of gambling is the growing market for activities that combine risk, excitement, and chance. The same desire for risk-filled experiences that is at the heart of the burgeoning extreme sports movement may be recognized as a basic motivating spirit behind certain types of gambling, such as gambling on sports events. These trends may be a cultural manifestation of the deterministic philosophy, which teaches that life evolved by chance and that life's circumstances continue to be largely determined by chance. In the context of this worldview, the thrill or adrenaline rush from taking extreme risks may provide an escape from what might otherwise be perceived as the general meaninglessness of life (Koerner, 1997).

In a related view, the contemporary risk-taking culture also has been attributed to the increasing abandonment of the Protestant work ethic and its values of hard work, self-discipline, and deferred gratification (Roberts, 1997). Irrational risk-taking is seen as bringing hope for immediate gratification. Brenner & Brenner (1990) concluded that "the increased downward movement across income and social class lines has produced a conviction that luck and chance, more than hard work and education, now determines financial futures" (Roberts, 1997, p.609). Edmund Bergler, in his book *The Psychology of Gambling*, identified three psychological characteristics of gamblers. These characteristics include: "1) the belief that they, as opposed to other gamblers, will win; 2) the faith in themselves to be smart or clever enough to win or in some way are ordained to win; and 3) the belief that their life and existence itself is a continuing gamble for survival" (Roberts, p. 609). Abetted by society's "live-and-let-live" attitude, gambling enters the new millennium as an activity gaining widespread societal acceptance.

Fourth, the tremendous increase in sports broadcasting has generated an increased interest in sport and sports wagering. Access to sports information and wagering opportunities has been greatly enhanced by a constant flow of sports programming on a multitude of cable network

channels, sports news channels, sports tickers on regular news channels, satellite TV sources such as Direct TV, sports bars with multiple television sets, 24-hour sports radio stations, and pre-game shows which discuss odds and point spreads. This improved access has, in turn, increased public interest in sport and in gambling (Doocey, 1996; Udovicic, 1998).

Finally, the Internet has provided new opportunities for both gambling proprietors and individual betting enthusiasts. The money generated within this industry reflects its newfound popularity. It is estimated that there are approximately 850 Internet gambling sites, and online gambling revenues in the United States are projected to increase from \$1.2 billion in 1999 to \$3 billion in 2002 (McDonald, 2000). Further, the Las Vegas gaming industry has recently seen fit to discontinue protectionist lobbying against Internet gambling in an effort to capitalize on this growth sector and be well positioned should online gambling be legalized in the near future. MGM Mirage and Harrah's Entertainment have signed partnership and/or promotional deals with companies offering Internet gambling. A trend toward involvement of the best known gambling brand names in Las Vegas could thrust online gambling into the American mainstream (McDonald, 2000).

### III. PROHIBITION VERSUS REGULATED LEGALIZATION

Paralleling the Prohibition-era debate over regulation versus prohibition of alcohol, certain segments of the gambling industry, gambling on sports and via the Internet, are currently the focus of debate regarding the proper means of controlling a suspect activity. As was the case with alcohol, there is a question as to the role and responsibility of the federal government with respect to this issue of control.

The Commerce Clause of the United States Constitution (Article 1, § 8 (3)) enables Congress "to regulate Commerce with foreign Nations, and among the several states, and with Indian Tribes." Although what qualified as "interstate commerce" was a topic of judicial debate in the early 20th century, today commercial activity is broadly interpreted. There is little doubt that the sports gambling industry participates in interstate commerce in the form of tourist travel, monies and transactions flowing across state lines as Internet betting takes place, and purchases of gambling supplies from out-of-state vendors.

In *U.S. v. Darby* (1941), the Supreme Court provided room for federal prohibition of undesirable activities that pass through interstate commerce. Justice Stone wrote, "Congress is free to exclude from the commerce articles whose use in the states for which they are destined it

may conceive to be injurious to the public health, morals, or welfare, even though the state has not sought to regulate their use" (Darby, p.114). Thus, there is case precedent that would enable Congress, where it so inclined, to pass legislation prohibiting all gambling activity.

On the other hand, gambling proponents argue in favor of continuing to regulate gambling rather than enacting a federal law banning all Internet and/or sports gambling activity. The following section summarizes arguments made (a) in support of state or federal laws that would legalize but regulate these segments of the industry, and (b) in support of federal law seeking to prohibit such gambling activities.

#### A. The case for legalization with governmental regulation

Opponents of prohibition assert that an outright ban on sport and/or Internet gambling could simply encourage illegal gambling and other unscrupulous activities. As stated by Frank Miller, the former director of the Washington State Gambling Commission and former president of the North American Gaming Regulators Association, "[o]ne might ask how it is possible to fashion an enforcement mechanism in an environment where prohibition will not work. The answer is, prohibition promotes unlawful activity, and regulation removes it" (Kailus, 1999, p.1045). From this perspective, the government would be futilely attempting to prohibit an otherwise prosperous industry with great market demand. Six primary arguments support the case for legalizing online sports gambling in a regulated fashion.

##### 1. Regulated gambling would provide economic benefits

Economic realities and related needs for additional governmental revenue sources prompted the growth of state lotteries beginning in the 1960s. Today, there are lotteries in 37 states and the District of Columbia (Clotfelter, C.T., Cook, P.J., Edell, J.A., & Moore, M., 1999). Lotteries have proven attractive as revenue-generating devices for the purpose of supporting a variety of positive societal initiatives, including public education, parks and recreation programs, economic development, and more (Clotfelter et al., 1999). The first part of the new millennium is certain to continue to be fraught with limited resources and escalating spending needs. The expansion of legalized gambling would contribute to the many areas where resources are needed.

Regulation of the prosperous online sports gambling industry would provide needed tax revenues, employment opportunities, and multiplier benefits that could not otherwise be realized. In California, for example, state-regulated gambling generates almost \$120 million in taxes while

employing an approximate 45,000 people (A gambling referendum, 1998). Illinois realizes significant monies from gambling via its 20% tax on the receipts from authorized riverboat gambling (Kailus, 1999). Although the Internet Tax Freedom Act of 1998 prohibits states from imposing taxes on electronic commerce for three years, significant monies are possible after that. Prohibition of gambling prevents states from appropriating revenues generated by the illegal \$100 billion gambling industry (based on 1997 figures), \$600 million of which is generated by gambling on sport.

2. Regulation of online gambling would curtail relocation of gambling businesses to foreign countries

Failure to legalize Internet gambling could create an economic drain on the United States economy. Twenty-four countries with legalized on-line gambling already provide havens for gambling proprietors (Kailus, 1999), and Monte Carlo and South Africa are considering following suit (McDonald, 2000). The relocation of Internet gambling providers from the United States to foreign countries has eliminated a source of revenue that could otherwise benefit the American economy. Meanwhile, corporations in other countries are reaping lucrative profits. For example, Lasseters Online, the first government-licensed online gambling operator in the Northern Territory of Australia, reported \$77.5 million in revenue after only 16 months of conducting business (McDonald, 2000). Legalization of online gambling would encourage such companies to reconsider doing business in the United States to capitalize on the high interest in gambling that exists in this country.

3. Sports gambling reflects a desired consumer activity in a market-driven economy

Sports gambling has become big business. Like other entertainment alternatives, the business should be subject to market demand without severe governmental restrictions. In Great Britain, sports gambling is legal and the government simply attempts to mitigate any social harms that result. Since legalization there, expenditures on all forms of gambling have declined sharply and the evidence suggests that citizens have generally gambled responsibly (Smith, 1990). There is no reason to expect the citizens of the United States to respond differently if they were given the same freedom of choice.

#### 4. Gambling's negative influence on youth may be over-estimated

Some research suggests that gambling contributes to aberrant behaviors among youth and young adults. However, according to the NORC survey, as cited in the National Gambling Impact Study Commission report (1999, p. ix), "[y]ouths 16 and 17 years old gamble less than adults and differently than adults ..." In fact, the NORC survey indicated that the proportion of youth who had placed a bet in the past year had decreased by about 10% (NGISC, 1999). By requiring use of a credit card or the deposit of funds into an E-cash account, an Internet gambling company might be able to effectively deter most youth from gambling online. While it is true that a child could steal a parent's credit card and gamble, banning Internet gambling on that basis would be as unreasonable as mandating that mail-order catalog transactions should be prohibited because of the chance for children to use their parents' credit card to purchase unsuitable materials.

#### 5. Sports betting has not brought the demise of sport

High stakes wagering on sports is legal in the state of Nevada, as long as the contest does not involve a Nevada team (Wong, 1994). Although sports bribery, game-fixing, and point-shaving scandals have occurred with some frequency, nearly all have been associated with illegal betting. The 1994 point-shaving incident involving basketball players from Arizona State University is the only known instance in which all the money was wagered legally (Brisendine, 1999). Inasmuch as legal sports gambling, although admittedly limited in scope and by location, has not escalated the corruption of sport. Neither has illegal sports gambling destroyed the integrity of sport. Although there have been highly publicized examples of athletes engaging in sports gambling (for example, Pete Rose and Art Schuster) and several instances of point-shaving and game-fixing, these are aberrations that are not representative of most players' conduct. The public has not abandoned its interest in sport, demonstrating a continuing belief in the integrity of sports contests.

#### 6. Sports governing bodies could continue to forbid specific types of gambling

Sports gambling practices are typically limited at an organizational level by implementing policies that prohibit individuals from gambling in specified contexts. Leagues and other sports governing bodies have traditionally taken strong stands against sports gambling. For example, the NFL, NBA, and Major League Baseball prohibit players from betting on their own sport (NGISC, 1999). The NCAA also has rules prohibiting

sports gambling behaviors (NCAA, 2000, p.53). Stringent penalties such as student-athlete ineligibility, disciplinary fines, and/or suspensions are generally effective deterrents to violations of such rules. Even if sports wagering were legalized and regulated by the government, sports associations and governing bodies would retain this freedom to regulate gambling activity within their spheres of authority.

#### B. The case for prohibition

A number of states have taken strong stances against both Internet and sports gambling. Attorneys General in "Indiana, Kansas, Minnesota, and Texas have issued opinions declaring Internet gambling illegal under the laws of their respective states" (Kailus, 1999, p.1048, n.26). Hawaii, Tennessee and Utah, as mentioned earlier, ban all forms of gambling activity, and only Nevada allows high stakes wagering on sports. Seven primary reasons are typically used to justify the prohibition of these gambling activities.

##### 1. Gambling represents a regressive tax

Kindt (1995, p.2) states "legalized gambling operations consist primarily of a transfer of wealth from the many to the few accompanied by the creation of new socio-economic negatives." Several scholars assert that gambling represents a regressive tax that places society's economically deprived at a financial disadvantage (Kindt, 1995). According to the "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission," those spending the most on lotteries did not complete high school and had incomes less than \$50,000 (Clotfelter et al., 1999).

Nor do gambling businesses target only consumers with accumulated wealth or ample discretionary income. Instead, they encourage anyone to participate who is eager to win immediate wealth with relative ease. In the words of one casino owner, "[w]e target everybody ... what's the difference if it's a social security check, a welfare check, [or] a stock dividend check?" (Goldin, 1999, p.40).

##### 2. Drains dollars from the local economy

It is often asserted that gambling activities drain dollars from the local community. Consumers, for example, have a vast array of products and services from which to choose when making leisure and entertainment purchase decisions. Goldin (1999) suggests that gambling takes away a portion of the consumer dollar that might have been spent on various substitutable activities such as a movie or miniature golf, which

are generally locally owned businesses. Although the same dollar transfer might happen if another small entertainment business opened in the same locale, certain negatives (e.g., crime, addiction, family disruption) accompany gambling that are not closely associated with other sport-related businesses. Moreover, "... gambling dollars spent in a legalized gambling facility are usually reinvested in more gambling facilities-which just intensifies the socio-economic negatives associated with gambling activities ..."(Kindt,1995,p.5).

Internet gambling may present greater problems than other forms of gambling by compounding economic hardships normally endured by local communities. As stated by Montpas (1996, p.169), "[w]hen a state legalizes lotteries or a city legalizes riverboat casinos, the hope is that the revenues generated will translate directly into tangible benefits like new roads, new fire engines, or new schools. With Internet gambling, however, those benefits are not as forthcoming." The reason for this is that in the case of Internet gambling, states receive none of the generated revenues since the majority, if not all, of Internet gambling businesses are domiciled in other countries. Hence, generated revenues do not remain in nor are they reinvested in the local community. Rather, consumers who choose to spend monies on Internet gambling rather than on other entertainment options cause the state to lose benefits associated with anticipated jobs, tax dollars, and so on. States suffer further deprivation of monies because tax dollars owed due to Internet gambling earnings may not be reported (Montpas, 1996).

### 3. Causes negative addiction-related behaviors

A great deal of literature discusses the maladies that can accompany problem gambling. For example, gambling is associated with such problems as divorce, bankruptcy, crime, "forgery and credit card theft, domestic violence, child neglect, problem gambling, and alcohol/drug offenses" (NORC, 1999, p. x). The yearly cost to society (in, e.g., productivity reductions, spending on social services, and creditor losses) is approximately \$5 billion (NGISC, 1999). Information from the Council on Compulsive Gambling indicates that "5 percent of all gamblers become compulsive gamblers, 90 percent of whom turn to crime to support their habits, including stealing, embezzling at work, writing bad checks, and committing insurance fraud. Up to 80 percent of compulsive gamblers contemplate suicide, and 14% actually attempt it" (McGraw, 1997, p.50). The following statement by Brooklyn district attorney Charles Hynes illustrates the perceived connection between gambling problems and crime: "[w]hat I want people to realize is that when they bet \$100

with these bookies, that \$100 will be used to sell drugs in the neighborhood, to purchase weapons that may kill cops, and to fund loan-sharking activities" (McGraw, 1997, p.52).

Young adults, along with adolescent youth, are perhaps the most susceptible to the lure of online sports gambling. And young adults are not immune to the addictive power of gambling. Among American college students, approximately five and one-half percent are already compulsive gamblers (Udovicic, 1998). In 1994, Alberta Vocational College surveyed 521 enrolled students (Adebayo, 1995). Survey results included the following:

- 88% had played a game for money or spent money on gambling;
- 63% of those who had gambled considered it a form of recreation, while 48% thought it provided a quick source of tax-free income;
- 18% of gamblers had borrowed money to gamble;
- 268 students (53%) reported that their gambling had created problems, with 23% citing stress, 25% financial setbacks, and 10% marital problems.

4. Increased availability of online gambling may reduce charitable contributions

Some gambling activities (e.g., church bingo, public school casino nights) generate revenues for society's charitable causes. Nonprofit organizations raise an approximate \$2.5 billion per year from "bingo, Las Vegas nights, and other charitable gambling activities" (Goldin, 1999, p.41). However, many fear that a continued increase in legalized gambling will divert monies and donations from charity-related endeavors. For example, people who play church bingo weekly might use monies normally devoted to that activity to occasionally indulge in online sports gambling from the convenience of their own home. If these monies cannot be replaced with alternative dollars, society could experience a reduction in the altruistic activities and related benefits supported by charitable organizations.

5. Online gambling encourages fraudulent behavior

Online gambling leaves bettors susceptible to fraud on the part of the gambling site operators. According to an official from the financial crimes unit of the Treasury Department, the "industry has done very little to make its activities inhospitable to...persons engaged or inter-

ested in committing financial fraud (Kailus, 1999, p. 1073, n.232). Kailus (p.1049) described the process of Internet gambling as follows:

Before placing a bet at an Internet gambling site, a player must open an account. Often, this is done by giving a credit card number and sometimes a social security number. Several sites require that players mail in a minimum deposit before any bets are placed. Methods of payment include credit cards, debit cards, bank wires or money orders. Bets can be placed on either sporting events or computer-simulated casino games of chance. Winnings are distributed as checks in the mail, bank drafts, or credits to the player's credit or debit card account. The player is left in the vulnerable position of relying on the good faith of the operator that the game was played honestly and that winnings will be credited as expected.

Thus, with online betting, no tangible money is passed from one person to another. Fraudulent behavior is difficult to detect, as the bettor may not have knowledge of where he or she is placing bets, the location of the gaming business, or a related phone number. Nor can bettors be assured of being paid their winnings. For example, in *Thompson v. Randa-Lopez, Inc.* (1998), the plaintiff purchased betting tokens called "Funbucks" with which to play various games on the defendant's casino website. According to the rules described on the site, winnings could be redeemed at the rate of \$1.00 per 100 Funbucks. Plaintiff Thompson allegedly won \$19,372,840 Funbucks, which he attempted to redeem, but the gambling site refused to pay him the \$193,728.40. He was forced to bring suit in order to try to get his winnings. Similarly, in September of 2000, Sports Bet Online, operated by a company domiciled in Belize, vanished from the web without paying off at least four bettors. They have filed complaints with the Interactive Gaming Council against the website operator; meanwhile, the company's phone number is no longer in service (McDonald, 2000). An additional concern of the Justice Department is that offshore gambling sites provide significant opportunities for money laundering by those involved with organized crime (McDonald).

#### 6. Online sports gambling poses a particular attraction and danger to youth

A great deal of the literature mentions the dangers of gambling for young people. Participating in sports pools is the third most popular form of gambling among teenagers (NORC, 1999). A recent Gallup poll reported that betting on college sports was twice as prevalent among teenagers (18%) as among adults (9%) (statement of Senator Brown-

back, 2000). The National Gambling Impact Study Commission found this trend sufficiently alarming to document their concern in their final report to the President of the United States (NGISC, 1999b).

The combination of two popular youthful pursuits, sports and computer use, makes online sports gambling an extraordinarily attractive entertainment choice for young people. As explained by Montpas (1996, p.173), "[t]eenagers, already fond of video games, are tempted [by computers and Internet gambling games]. And, because kids often know more about computers than their parents, they can circumvent the parent's control." To compound the issue, some Internet gambling sites offer wagering opportunities as low as 20 cents (Kailus, 1999). Hence, Internet gambling is available to youth with little, if any, accumulated earnings.

There is also a concern regarding the addictive potential of early exposure to sports gambling. There is evidence that adolescents are at least as likely, and perhaps twice as likely, as adults to become compulsive gamblers (NORC, 1999). The American Academy of Pediatrics estimates that there are over one million compulsive teenage gamblers, "whose first experience with gambling is on sports" (statement of Senator Brownback, 2000). As the research indicates, gambling is an activity common among youth and young adults. Many are concerned that the acceptance of gambling among youth and young adults will result in increased incidences of domestic abuse, bankruptcies, financial woes, theft, burglary, and other addiction-related behaviors.

#### 7. Gambling jeopardizes the integrity of sport

As previously noted, it is estimated that by 1997 over \$100 billion was bet on sports illegally (Udovicic, 1998). The prevalence of sports gambling among athletes has been documented. In 1992-1993, Cullen and Latessa surveyed two thousand NCAA Division I basketball and football players regarding their involvement and/or exposure to sports gambling, obtaining a 32% response rate (Udovicic, 1998). The survey indicated the following about the respondent student-athletes:

- Almost 4% had gambled on a game in which they had played;
- Almost 26% had gambled on other collegiate sporting events;
- Almost 1% had received money from gamblers to alter game performance.

Results from a more recent study by Cross and Vollano (1999) are also alarming. They surveyed 3,000 athletes at Division I institutions, obtaining a 25% response rate (n=758). Although it is hard to generalize these results due to the limited response rate, the results do not seem out

of line with what might be expected six years after the Cullen and Latessa study. Cross and Vollano found the following:

- 72% of the college football and basketball players had bet money at least once since entering college;

- Almost 35% of football and basketball players said they had gambled on sports;

- 4.1 percent of male athletes said they had bet with a book- maker or another type of agent. Those who did so reported placing an average bet of \$57.25, or \$225 per month;

- More than 5% of the male college football and basketball players said they had provided inside information to gamblers, bet on a game in which they participated, or accepted money for performing poorly in a game.

The Black Sox scandal of 1919, Pete Rose's battle with baseball, and Art Schlichter's gambling problems are additional prominent illustrations of athletes betting on sport in a detrimental fashion. The anonymity provided to Internet gamblers prompts additional concerns regarding the ease with which both athletes and non-athletes can engage in sports-related Internet gambling. Specifically, students can use fictitious name while gambling from school libraries, dorm rooms, or campus computer labs. Online sports gambling by students would thus be virtually impossible to monitor for purposes of deterrence.

Many also fear that increased access to sports gambling would exacerbate problems with bribery and point-shaving/game-fixing schemes despite the fact that sports bribery is a federal crime (Bribery in Sporting Contests Act of 1964). College athletes are particularly susceptible to bribery with sex, money, or drugs luring them to fix games, shave points, or provide inside information to bookmakers. Michael Franzese, a former organized crime figure who arranged to fix several games, is quoted as having said, "[y]ou have no idea how easy it is to influence these kids to shave points" (Udovicic, 1998, p.409). Since 1942, there have been 33 instances of alleged sports bribery and game-fixing/point-shaving schemes, with 18 of these occurring since 1990 (Anti-gambling seminar ..., 1999; Dobie, 1998; Rolnick, 1998; Udovicic, 1998). Franzese also admitted that organized crime figures had successfully bribed sports officials upon occasion (Udovicic, 1998). Legalizing sports gambling would only increase the likelihood of such occurrences. There is a clear trend toward a higher frequency of tampering with the outcome of games. If this trend were increased by a rise in gambling activity due to legalization, the integrity of sporting contests would increasingly be in doubt.

The anti-gambling policies of sports governing bodies are not effectively deterring gambling and bribery activity. Recognition of this fail-

ure has prompted professional and college sports associations to aggressively lobby Congress for passage of federal legislation prohibiting online gambling and gambling on sports (Gambling legislation still alive..., 2000; Governmental affairs report, 2000).

Upon weighing the arguments for regulation versus those for prohibition of Internet and sports gambling, a good case can be made that online sports gambling should be prohibited. It is a more suitable candidate for prohibition than other forms of gambling because of: its unique attractiveness to youth; the dangers it poses to both youth and the integrity of sport; and, as will be discussed below, the inability of the various states to enforce their anti-gambling laws due to the jurisdictional problems caused by the unbounded nature of the Internet.

#### IV. APPLICABLE EXISTING LEGISLATION

##### A. State legislation

Not counting horse racing, dog racing, and jai alai, six states have experimented with some form of gambling on sport. Oregon administers a sports lottery game, and Delaware had one before abandoning it after being sued by the NFL for trademark infringement due to its use of team names. Montana sanctions a form of pari-mutuel sports wagering. One-dollar racecar betting is permitted in Washington. New Mexico allows wagering on bicycle races. Nevada, with its sports books, is the only state that provides for extensive, high stakes sports wagering (Doocey, 1996). Patrons are only prohibited from betting on intercollegiate games involving Nevada schools, regardless of where the game is being played; betting on intercollegiate contests involving schools from other states is permitted (Wong, 1994).

Internet gambling has not yet been legalized in any state except Nevada, which only recently passed Assembly Bill No. 466 (2001) authorizing the Nevada Gaming Commission to begin to adopt regulations allowing the practice within the state of Nevada. According to Schwarz (1999, pp.1033, 1036),

[a]n examination of ... state constitutions and statutes ... demonstrates that gambling is presumptively illegal absent explicit constitutional and/or statutory authorization ... Even in Nevada, where gambling is permitted by law, it is permitted only under very stringent governmental regulation and only when such gambling is explicitly authorized and licensed by the state..."

This presumption of the illegality of gambling activity without explicit authorization has been recognized by numerous state attorneys general, as well as by federal and state courts that have faced this question

(Schwarz,1999). Indeed, according to Schwarz, in most states the statutory and constitutional provisions that address gambling have singled out specific forms of gambling to be legalized, and either prohibited all other gambling activities or required that they be authorized by vote or by the legislature. With the exception of the new Nevada law, Internet gambling has never been explicitly authorized by any jurisdiction in the United States (Schwarz, 1999). Thus, Schwarz makes a persuasive argument that where states have not explicitly authorized it, Internet gambling is illegal under state law.

## B. Federal legislation

Congress has the constitutional authority to regulate interstate and foreign commerce via the Commerce Clause. Benefits associated with federal rather than state regulation include uniformity of application among states, eased enforcement dilemmas, simplified state jurisdictional issues, and reduced Internet user confusion. Six federal laws regulate some facet of the gambling industry. This legislation is discussed below.

### 1.The Interstate Wire Act of 1961 (also known as the Wire Act)

The Interstate Wire Act states:

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. [emphasis added] (18 U.S.C.§ 1084).

In *United States v. Southard* (1983), the United States Court of Appeals for the Third Circuit held that the defendants violated the Interstate Wire Act when transmitting sports gambling information over the telephone. Similarly, in *United States v. McDonough* (1988), the United States Court of Appeals for the Fifth Circuit affirmed the decision of a lower court convicting McDonough for violation of the Wire Act when he received bets on baseball and football games via telephone from Texas to Massachusetts. The Wire Act does, however, provide an exception for phone bets placed between individuals in different states where such betting is legal in both states.

Although the above cases pertained to gambling transactions via telephone, transmission via the Internet should qualify as a wire communication. "Gambling-related communications transmitted over the Internet cannot be meaningfully distinguished from any other transmissions over wire communication facilities. Phone wires remain essential to the Internet. ..." (Schwarz, 1999, p.1046). In *The People of the State of New York v. World Interactive Gaming Corporation* (1999), the Supreme Court of New York, New York County, held that World Interactive Gaming Corporation's subsidiary Golden Chips Casino, Inc., located in Antigua, could be enjoined from advertising and accepting bets from New York residents over the Internet in violation of the Wire Act.

While helpful in regulating the acts of sports gambling businesses, the Interstate Wire Act has an important limitation in that it does not regulate the bettor. Individuals placing sports bets face no penalty (see *United States v. Baborian*, 1981). Internet access providers would also escape conviction due to the following provision of the Wire Act. The Wire Act states:

When any common carrier, subject to the jurisdiction of the Federal Communications Commission [FCC], is notified .... that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility ... (18 U.S.C. § 1084).

This means that Internet access providers, which are considered to be common carriers, will not be treated as abettors of illegal activity unless they fail to comply with governmental orders to deny access to illegal users.

## 2. The Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprising Act of 1961 (also known as the Travel Act)

The Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprising Act of 1961 would subject to prosecution

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to - (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity ... (18 U.S.C. § 1952).

Penalties for violators include either a fine and/or imprisonment (18 U.S.C. § 1952). The applicability of the Travel Act to the regulation of online gambling is apparent. Internet gambling does represent interstate commerce and the Act defines unlawful activity to include "any business enterprise involving gambling" (Travel Act, § 1952(a)-(b)). Further, similar to the Wire Act, the Travel Act's inclusion of "foreign commerce" should enable the courts to exercise jurisdiction over gambling businesses located in foreign countries that advertise and accept Internet gambling activity from users located in the United States (see eg., *World Interactive Gaming Corporation*, 1999, in which the Supreme Court of New York asserted jurisdiction on this basis). However, similar to the Wire Act, the reach of the Travel Act is limited as it only pertains to the gambling business itself while ignoring the activity of the bettor.

### 3. The Interstate Transportation of Wagering Paraphernalia Act of 1961 (also known as the Wagering Paraphernalia Act)

The Wagering Paraphernalia Act of 1961 may have applicability to Internet gambling activity. According to this Act:

Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both (18 U.S.C. § 1953).

Although the Wagering Paraphernalia Act is applicable on its face, case precedent allows such transactions when they are made from a state where gambling is legal to another state where gambling is also legal. For example, in an early case, *United States v. Baker* (1966), the United States Court of Appeals for the Third Circuit held the Act did not apply to a situation in which lottery tickets from a state where betting was legal were transported to a foreign nation where gambling activity was also legal. However, because only Nevada has legalized Internet gambling and sports gambling, the Wagering Paraphernalia Act may prove useful in combating illegal gambling activity.

4. Racketeering: Prohibition of Illegal Gambling Businesses Act of 1970 (also known as the Racketeering Act)

The Racketeering Act is similar to the Wire Act in that both prohibit illegal gambling businesses. This statute defines an illegal gambling business as one which

(i) is a violation of the law of a State or political subdivision in which it is conducted; (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day (18 U.S.C. § 1955).

A violation of the Wire Act typically involves a violation of § 1955 (*United States v. Southard*, 1983). Once again, though, similar to other attempts to regulate gambling, this legislation is limited due to its failure to regulate individual bettors (18 U.S.C. § 1955). Further, it pertains only to those gambling establishments with at least five employees (*Id.*).

5. Racketeer Influenced and Corrupt Organizations Act of 1970 (also known as RICO)

The Racketeer Influenced and Corrupt Organizations Act of 1970 prohibits conspiring to engage in criminal enterprises, including sports gambling rings. Although some illegal gambling activities might be covered by RICO, its use with regard to sports gambling is rare due to the need for evidence of the type of conspiracy and pattern of racketeering activity at the level necessary to establish the elements of a RICO violation.

6. The Professional and Amateur Sports Protection Act of 1992 (also known as the Bradley Bill)

The Professional and Amateur Sports Protection Act of 1992 states: It shall be unlawful for (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a government entity, a lottery, sweepstakes or other betting, gambling, or wagering scheme based ... on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games (28 U.S.C. § 3702).

This law, known as the Bradley Bill for its sponsor Senator Bill Bradley, forbids the establishment of sport gambling operations in the

United States but, like the others, does not address the gambling activities of individual bettors (28 U.S.C. § 3702). The Bradley Bill is also limited in its application to Internet sports gambling due to the opportunities for Internet gambling providers to locate in foreign countries. Furthermore, §3704 of this law exempts legal sports gambling activities that existed in six states prior to its enactment.

#### V. JUDICIAL APPLICATION OF EXISTING LEGISLATION - THE TREND TOWARD PROHIBITION OF INTERNET GAMBLING

The effectiveness of existing federal and/or state gambling regulation has been questioned for three primary reasons. First, current federal regulation reaches only the gambling business itself and not the individual bettor. Second, these laws were passed prior to the burgeoning of Internet activity and, therefore, do not explicitly address the issues unique to Internet gambling transactions. Third, most, if not all, Internet gambling businesses are domiciled in and operated from within foreign countries; thus, enforcement is difficult because extradition efforts require either 1) an extradition treaty and that the offense be illegal in both countries, or 2) voluntary cooperation in honoring United States law under the "international etiquette" principle of comity. Comity would mean that the legal system in a foreign country would voluntarily give effect to the laws of the U.S. against gambling, and therefore extradite offenders as a matter of diplomatic courtesy. However, due to their interest in substantial gambling revenues, foreign countries that have legal Internet gambling are for obvious reasons not interested in cooperating with United States enforcement efforts via either extradition or comity. Thus, federal regulatory efforts have been largely toothless when it comes to preventing gambling businesses from illegally accepting on-line bets from citizens of states where the types of gambling games offered over the Internet are illegal. Nevertheless, recent case precedent is beginning to provide some support for the applicability of existing gambling-related legislation to the new context of Internet gambling. Judicial decisions establishing this trend are discussed below.

##### A. Personal jurisdiction over out-of-state defendants

Prior to the existence of the Internet, regulation of certain gambling activities and prohibition of others had the approval of constituents because state legislation is contoured based on local social values. However, gambling on the Internet has presented difficult jurisdictional questions because the Internet has no discernible state or even national

borders. It is not clear whether the will of the people, as reflected in their state's laws forbidding sports gambling, can prevent Internet sports betting from occurring in their state. This lack of clarity has been caused by uncertainty over what types of Internet business activities by an out-of-state website operator involve a state's resources and citizens in a manner sufficient to enable a court in that state to assert personal jurisdiction. However, recent judicial decisions are beginning to clarify when a state may assert jurisdiction in order to prosecute these types of defendants.

Regulation of Internet activity invites jurisdictional scrutiny when, for example, a company advertises in a state where gambling is illegal and/or accepts bets from individuals located in a state where gambling is prohibited. In order for a court to assert personal jurisdiction over an out-of-state defendant, the court must consider whether asserting jurisdiction under state law comports with the due process clause of the Fourteenth Amendment. In order to do so, the minimum contact requirement established by the Supreme Court in *International Shoe Co.*

*v. State of Washington* (1945), must be satisfied.

The court must engage in a two-pronged analysis. The court must first consider whether the corporation had sufficient minimum contacts with the forum state, and second whether it is fair and reasonable to have the nonresident defend itself in the forum state. According to the Supreme Court, this analysis must indicate that the defendant "purposefully availed itself of the privileges of conducting activities within the forum State" thus coming under the coverage of that state's laws, creating a situation where it is "reasonably foreseeable" that the defendant might be subject to judicial review in that state (*World-Wide Volkswagen Corp. v. Woodson*, 1980).

The courts are beginning to identify a spectrum of types of contacts with the forum state that they can use in determining when to assert personal jurisdiction over Internet activity. On one end of the spectrum are cases involving passive websites, with little interaction between the business and the web-user, in which courts will rarely assert jurisdiction. On the other end are websites which involve knowing and repeated transmissions to consumers (substantial activity) in the forum state, "such as 1) sales; 2) solicitations; 3) acceptance of orders; 4) links to other sites; 5) product lists; or 6) the transmission of files" (Schwarz, 1999, p.1040, n.89). In the ambiguous area in the middle of the spectrum are interactive websites where information is exchanged between the site operator and the visitors to the site, such as downloadable files. Here, the level of interactivity between the parties is examined (Schwarz, 1999,

citing *American Homecare Federation, Inc. v. Paragon Scientific Corp.*, 1998).

Cases at either end of the spectrum have been decided with some uniformity (but see *Telco Communications Group, Inc. v. An Apple A Day, Inc.* (1997), cited in *Thompson v. Handa-Lopez* (1998)), in which the mere maintenance of a continuous website was held to constitute purposeful availment of business opportunities in the forum state). *Bensusan Restaurant Corp. v. King* (1997) is an example of a case in which the court declined to find personal jurisdiction under New York law because the Internet activity that reached the Missouri defendant fell at the passive end of the spectrum. In *Bensusan*, the website contained general information about a jazz club, its calendar of events, and ticket information, but was non-interactive in that consumers could not use the website to purchase tickets. Thus, the defendant had not established minimum contacts with the state of New York. Other courts have declined to find jurisdiction when faced with similarly non-interactive websites (see, e.g., *Hearst Corp. v. Goldberger* (1997), cited in Schwarz, 1999). A case located at the "active" end of the minimum contacts spectrum is *Compuserve, Inc. v. Patterson* (1996). In this case, the court found jurisdiction under Ohio law where the defendant repeatedly sent software computer files via the Internet from Texas to the Ohio plaintiff (*Compuserve*, p.1269).

Cases represented in the middle of the spectrum are where the issue of legitimate personal jurisdiction is more ambiguous, and where the level of interactivity between the consumer and the site operator is the determining factor in the analysis. In *Inset Systems, Inc. v. Instruction Set, Inc.* (1996), the court asserted personal jurisdiction where the defendant's contacts with the forum state consisted of posting a Web site that was accessible to approximately 10,000 residents and maintaining a toll free telephone number. The court reasoned that such Web sites are continually available to any Internet user, and thus distinguishable from the time-limited nature of newspaper, television, or radio advertisement availability. Also important was that the defendant's solicitations were sufficiently repetitive to rise to the level of purposeful availment of the benefits of doing business in Connecticut (Kailus, 1999). Another example is the case of *Maritz, Inc. v. Cybergold, Inc.* (1996). In *Maritz*, the court exercised jurisdiction based on the fact that the defendant's promotional Web site actively solicited users to add their addresses to a mailing list to receive updates about a soon-to-be-offered electronic mailbox Internet service (p.1331). The court also found it important that

the defendant responded to every user who accessed the site. (*Maritz*, p. 1333).

A more recent case, *Thompson v. Randa-Lopez* (1998), also falls close to the middle of the spectrum. Plaintiff Thompson, a Texas resident, sued to recover \$193,728.40 that he won on the Internet Casino site "Funscape's Casino Royale" operated by a California corporation. The defendant filed a motion to dismiss based upon lack of personal jurisdiction. The *Thompson* court found it irrelevant that the defendant corporation did not maintain an office in Texas or employ a sales force or employees to work in that state. Referring to precedent from other jurisdictions that it found persuasive, the court considered the Internet's global reach as significant (*Thompson*, p.743-744). In denying the motion to dismiss, the court stated, "the Internet can reach tens of thousands of users within Texas alone" (p.743). Further, the company's contact with citizens of other states via its toll free number, advertising, and interactivity with gamblers playing games was held sufficient to meet the minimum contacts requirement. The court found that there was a greater amount of interaction between the consumers and the defendant here than in the *Inset* and *Maritz* cases, because here the defendant Randa-Lopez "continuously interacted with the casino players, entering into contracts with them as they played the various games" (p.744). Additionally, the exchange of information was not for prospective commercial gain as in *Maritz*, but for present commercial gain. (p.744). Finally, it was significant to the *Thompson* court that the bettor played the games in Texas, "as if they were physically located in Texas," and that the defendant would send any winnings to the plaintiff in Texas (p.744). Thus, there were minimum contacts sufficient to establish purposeful availment of business opportunities in Texas.

The second issue in *Thompson*, as to whether it was fair and reasonable to hold the defendant subject to the laws of the forum state, was also decided in the plaintiff's favor. Three factors were addressed including the: "[a] burdens on the plaintiff and defendant resulting from litigating in another state, [b] the forum state's interest in adjudicating the dispute, and [c] the interstate judicial system's interest in efficient resolution of controversies" (p.744). The court found that the implications associated with this case outweighed any burden placed upon the defendant California company by requiring them to defend the case in Texas (p.745).

In what is thought to be the first criminal conviction involving an Internet gambling website based in the United States, a Missouri court asserted jurisdiction over an Internet gambling operator incorporated in Delaware with its principal of business in Pennsylvania. The court

entered a permanent injunction prohibiting the defendant gambling operator from using its website to receive wagers from Missouri residents (*Nixon v. Interactive Gaming & Communications Corp.*, 1997). Soon thereafter, a Missouri grand jury indicted the gambling company for illegally brokering wagers over the Internet, and the company pleaded guilty (Kailus, 1999).

Thus, the trend seems to be that, at least with regard to interstate gambling commerce over the Internet, existing state and federal gambling laws will be enforced due to the increasing willingness of courts to assert personal jurisdiction across a wide area of the minimum contacts spectrum of types of Internet activities. A more difficult question arises when a court in the United States attempts to assert personal jurisdiction over a defendant located on foreign shores where the Internet gambling activity is legal.

#### B. Personal jurisdiction and subject matter jurisdiction over foreign defendants

The judicial trend toward asserting personal jurisdiction over out-of-state defendants was an important factor in causing Internet gambling providers to relocate to other countries where they now attempt to operate outside the jurisdiction of American courts (Arnold, 1998). Countries that have benefited from the prohibitive United States legal environment include Antigua, Belize, Costa Rica, Curacao, the Dominican Republic, Grenada, and Liechtenstein (Hogan, 1998). Very little case law exists on the issue of whether a state may assert jurisdiction over defendants domiciled in countries such as these. The following discussion analyzes two cases in which the courts have faced this issue.

In *State by Humphrey v. Granite Gate Resorts* (1998), the court held that Minnesota could exercise personal jurisdiction over a Nevada defendant who advertised its gambling services on a Nevada home page made available to a Minnesota bettor. The Internet activity in this case was located in the middle of the minimum contacts spectrum, involving as it did an advertisement with a toll-free number for upcoming gambling services, the development of a mailing list of interested consumers, and messages sent on-line to consumers confirming that updates on the gambling services would be forthcoming. All Star Sports and WagerNet, the gambling services at issue, were the property of a Belizean corporation, which was affiliated with Granite Gate Resorts, the defendant Nevada-based company. Because the Belize company was not joined as a defendant, the court did not rule on whether it had personal jurisdiction over a defendant based on foreign shores. However, in dicta the court

did comment that "'foreign' corporations that seek business in Minnesota and reserve the right to sue Minnesota customers in courts here cannot claim inconvenience as an excuse to avoid personal jurisdiction here, particularly in light of the state's interest in regulating advertising and gambling" (*Granite Gate Resorts*, p.721).

Taking a cue from the court's dictum in *Granite Gates Resorts*, a New York court, in the first decision in the country that has held that Internet gambling violates both state and federal law, broke through the safe haven gambling companies have sought by operating out of a foreign country where gambling is legal (*World Interactive Gaming Corporation*, 1999). This case focused on whether the court could enjoin "a foreign corporation legally licensed to operate a casino offshore from offering gambling to Internet users in New York" (p. 854). The Antigua-based defendant company argued that the court lacked both personal jurisdiction and subject matter jurisdiction necessary to prosecute alleged gambling violations under New York Penal Law, and under federal laws including the Wire Act, the Travel Act, and the Wagering Paraphernalia Act. However, the court responded as follows:

Wide range implications would arise if this Court adopted respondents' argument that activities or transactions which may be targeted at New York residents are beyond the state's jurisdiction. Not only would such an approach severely undermine this state's deep-rooted policy against unauthorized gambling, it would also immunize from liability anyone who engages in any activity over the Internet which is otherwise illegal in this state. A computer server cannot be permitted to function as a shield against liability... (p.860).

In asserting personal jurisdiction over the Antiguan defendant, the court found that even had the Antiguan company not been a wholly owned subsidiary of a Delaware corporation doing business in New York, there were still sufficient minimum contacts with the state of New York to meet the *International Shoe Co. v. State of Washington* (1945) requirement (*World Interactive Gaming Corporation*, p. 858). The company used a New York-based studio to design the graphics for their on-line casino; the website was downloaded and edited in New York; the advertising campaign was nationwide; the company knew it was reaching New Yorkers and made no attempt to exclude them from receiving the advertising; and respondents had received phone calls at the toll-free number listed on their website from New York consumers. Finally, the Antigua company was considered merely an alter ego of its New York owner with no truly separate corporate identity, and the court noted that

through its New York owner the Antiguan defendant had actively solicited investors to buy shares of stock.

The court also held that it had jurisdiction over the subject matter involved in this case, declining to accept the argument that the New York Penal Code and federal anti-gambling statutes did not apply because the gambling occurred outside of New York state (p. 858-864). In the context of Internet gambling, there has been a dispute among legal scholars as to where the gambling actually occurs: at the site where the bettor places the bet, at the site where the gambling business receives the bet, or in cyberspace (Goldstein, 1997). This court took the position that gambling is occurring in the state where the person is engaged in entering the bet and transmitting the information. Even though gambling is legal in Antigua where the bet is received, it is illegal in New York where it was placed. In the words of the Assistant Attorney General of New York who successfully prosecuted the *World Interactive Gaming Corp.* case:

Even though Internet gambling [computer] servers may be located offshore, the gambling screens are viewed on a United States resident's monitor, the gambling decisions are made in the resident's home, and the gambling bets are placed and transmitted from the resident's computer. In essence, all relevant gambling activity takes place at the locus of the gambler, regardless of where the server is located. This leads to the inescapable conclusion that the gambling takes place within the United States, in violation of United States law (Schwarz, 1999, pp.1042-1043).

Thus, in the context of Internet gambling activity, legality at the bet's destination does not trump illegality at the bet's origin.

The defendants also argued that the federal Wire Act, Travel Act, and Wagering Paraphernalia Act did not apply because they do not explicitly refer to Internet gambling. The court rejected this argument by finding that Internet gambling always involves use of the telephone wires, and therefore is subject to the same laws as gambling over the telephone. (p. 861-862). The court cited the legislative history of the Wire Act as follows:

'The purpose of the bill is to assist various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce' (p. 861).

According to the court, this rationale for existing federal regulation shows the intent of Congress to exercise its plenary power under the Commerce Clause of the Constitution "to regulate illegal gambling conducted between the United States and a foreign location" (p. 862). The court enjoined the World Interactive Gaming Corporation and its Antigua company from any further offering of Internet gambling activities to New York residents. However, enforcement is another matter entirely, since extradition of foreign defendants is unlikely, and foreign Internet gambling companies could simply change the name of their website and commence soliciting consumers again. Furthermore, since existing federal statutes do not cover the actions of individual bettors, there is no effective deterrent to those who wish to patronize the websites of offshore gambling operators.

## VI. PROPOSED LEGISLATION AND ENFORCEMENT STRATEGIES

The Internet Gambling Prohibition Act (IGPA) of 1997 (S. 474), also known as the Kyl Bill after its sponsor Senator Jon Kyl, was proposed to the Senate on March 3, 1997 (Hogan, 1998). The Act would erase any doubt as to the application of the Wire Act to the Internet by explicitly incorporating new computer and satellite communications technologies (Arnold, 1998). In its original form, the Act would "prohibit any person engaged in a gambling business from knowingly using the Internet to place or receive a bet or wager or to send, receive, or invite information assisting in the placing of a bet or wager" (Tomback & Desimone, 1999, p. S40).

Unlike existing federal legislation, the 1997 version of the IGPA would have criminalized the actions of individual bettors as well as gambling businesses, imposing a maximum penalty of \$5,000.00 or one year's imprisonment, or both (IGPA, 1997). The IGPA would also clarify that the Wire Act applies to both casino and sports gambling. The bill was passed by the Senate with a vote of 90-10 in July 1998, but later failed to pass the House of Representatives (Washington update, 1999).

Senator Kyl re-introduced a similar bill, the Internet Gambling Prohibition Act of 1999, which was passed by the Senate on November 19, 1999 (S. 692, 106th Cong., 1<sup>st</sup> Sess.). However, the most recent version of this bill no longer contains a provision that would criminalize the conduct of individual bettors. The IGPA is now on hold due to the failure of its companion bill (H.R. 3125) to pass the House of Representatives before Congress adjourned in October of 2000 (McDonald, 2000).

Critics of proposed federal attempts to prohibit Internet gambling typically argue that such laws are unenforceable because of problems associated with gaining the cooperation of foreign governments in obtaining extradition of offenders and/or shutting down the gambling companies' Internet computer servers, when those same governments have licensed the offending gambling operators. Thus, they argue that passing a law prohibiting on-line gambling is to pass a toothless law, accomplishing nothing in the way of deterrence. If the focus of enforcement is to shut down those gambling businesses by direct action, these laws would indeed be ineffective.

In enjoining the Interactive Gaming & Communications Corporation from engaging in further Internet gambling business with the citizens of Missouri, the *Nixon* court identified two methods designed to force Internet gaming operators to respect the gambling laws of the various states: 1) requiring Internet gambling businesses to prominently list on their home page all states where the type of gambling they offer is prohibited, and to clearly indicate that bets cannot be placed by residents of those states; and 2) requiring the gambling business to utilize software that would validate the state of residence of each on-line bettor and automatically reject bets from those states where that type of gambling is prohibited (*Nixon*, 1997).

A court order like this one is a step in the right direction, but enforcement of such an order against an unwilling foreign business is another story. However, there are two other parties to an Internet gambling transaction – the bettor and "the intermediary party that facilitates the transfer of funds" between the bettor and the gambling operator (Schwarz, 1999, p.1049). Eliminating access to either of these parties, argues Schwarz, would successfully prevent American citizens from participating in gambling over the Internet.

Schwarz proposes three mechanisms for denying access to Internet gambling sites by individual gamblers: 1) requiring Internet computer server providers to use blocking or filtering software to disable access to gambling websites; 2) removing the user-friendly domain names of offending websites (e.g., cathyscasino&sports.com) from the servers, or canceling the Internet gambling website's registration as a dot.com; and 3) ordering the telephone company to terminate a gambling website's telecommunications service. The first proposal is already included in the 1999 version of Internet Gambling Prohibition Act as a remedy for violation of the Act.

Schwarz's second proposal, removing the domain names of offending websites, would be an indirect approach to enforcement in that this ac-

tion would simply make it more difficult for consumers to locate gambling websites because most users would not know how to locate the appropriate computer server without a user-friendly website name. Because Internet gambling businesses are particularly dependent upon the appearance of stability and legitimacy in order to be able to persuade bettors to part with their money and trust that they will receive their payouts, a company that had to constantly change their domain name to get around such enforcement actions would be unlikely to maintain the consumer confidence necessary to remain a successful business (Schwarz, 1999).

The third proposal, terminating the telecommunications service of the gambling provider, has already been used in the context of a telephone sports betting business that was operating in Florida (Schwarz, 1999). The Wire Act provides that a common carrier under the jurisdiction of the Federal Communications Commission must take such action when directed to do so by a law enforcement agency to stop illegal use of its wires for gambling. Since the Wire Act has been held to apply to Internet gambling in the *World Interactive Gaming Corporation* case (1999), this provision of the Wire Act should also be applicable.

Schwarz also proposes three mechanisms that focus on the intermediary party facilitating the transfer of funds between the bettor and the Internet gambling operator. The first proposal is to enact legislation enabling law enforcement agencies to require United States banks to cease providing check or bank wire clearing services for instruments made payable to Internet gambling operators (Schwarz, 1999). Because all instruments drawn on United States banks and paid to a foreign company must be cleared through an American bank in order for that company to receive its money, passing such legislation would frustrate offshore gambling operators' ability to accept their bets.

The second mechanism proposed by Schwarz is to get the commercial money transfer businesses like Western Union and digital cash companies to voluntarily cooperate in preventing the transfer of funds to known Internet gambling operators. For example, Western Union signed an "Agreement of Voluntary Cooperation" with the Attorney General's Office in Florida in which it agreed to modify some of its business procedures to prevent the use of its money transfer business to pay for sports betting that was illegal in that state (Schwarz, 1999).

Third, Schwarz proposes enacting legislation "making it illegal for credit card companies to pay businesses for debts incurred through Internet gambling" (Schwarz, 1999, p.1065). Since businesses must register with credit card companies to be able to accept their card as payment,

credit card providers have a means of determining the nature of the business and thus avoiding liability. Additionally, there is a long-standing public policy in this country against the enforcement of gambling debts incurred on credit.

For example, a California gambler sued her credit card companies and Providian National Bank seeking to avoid paying her \$70,000.00 credit card gambling debt on the grounds that: a) the card providers should never have granted merchant accounts to on-line gambling companies because gambling is illegal in California; b) online betting is illegal under the Wire Act; and therefore c) the illegal debt was unenforceable. The lawsuit was settled, and Providian, one of the country's largest VISA card issuers, has since refused to process transactions for gambling on the Internet (McDonald, 2000). If this lawsuit causes credit card providers to doubt their ability to recover their money from gamblers incurring debt, they may simply refuse to process Internet gambling transactions. This might severely deter Internet gambling by removing the most convenient form of payment (Schwarz, 1999). However, it may simply encourage online gambling businesses to move toward using other kinds of electronic payment, such as E-cash and smart cards (McDonald, 2000).

Another piece of proposed federal legislation also has the potential to establish a stronger foundation for regulatory and enforcement efforts against on-line sports gambling in the United States. Senator Brownback introduced the High School and College Sports Gambling Prohibition Act (HSCSGPA) on February 1, 2000. (S. 2021, 2000). This bill prohibits states from legalizing high school and college sports gambling and makes such gambling illegal in those states previously exempted from federal regulation under the Bradley Bill, including Nevada. In addition to high school and college sports events and performances of high school and college athletes, the bill forbids states to allow gambling on the Summer and Winter Olympic Games. The legislative history of the bill indicates that the intent of its sponsors is to stem the rising tide of point-shaving and game-fixing scandals in college sports, to protect the tradition of amateurism in college and Olympic sports, and to deter youth gambling (statement of Senator Brownback, 2000; statement of Senator Leahy, 2000). This bill was reintroduced, with some additional provisions concerning drug testing, as the Amateur Sports Integrity Act (S. 2340, 2000) in order to put it within the jurisdiction of Senator McCain and the Senate Commerce Committee (D. Nestel (Senior Assistant Director of Federal Relations, NCAA) personal communication, October 16, 2000).

It should be mentioned that in response to the Brownback bill, Senator Reid introduced an alternative bill in the Senate, on February 9, 2000. Known as the Combating Illegal College and University Gambling Act, the bill calls for the establishment of an investigatory panel to determine the root causes of illegal sports gambling prior to making any legislative response (S. 2050, 2000). It remains to be seen which approach, if either, will gain the support of the entire Congress, since both bills languished without being brought to a vote before Congress adjourned in 2000. Senator McCain has promised to reintroduce the Amateur Sports Integrity Act as soon as the next Congress is convened (Walker, 2000).

## VII. CONCLUSION

If the Internet Gambling Prohibition Act of 1999 and the Amateur Sports Integrity Act of 2000 were successfully enacted, taken together they might provide a more effective deterrent to Internet sports gambling than existing federal legislation. The current version of the IGPA does not reach individual bettors, but does make explicit that federal anti-gambling legislation does cover Internet gambling businesses engaged in interstate and foreign commerce. The Amateur Sports Integrity Act would also prohibit states from legalizing gambling on amateur sports. Given the growth in acceptability and increased patronization of the gambling industry, an argument can be made for legalization, subject to governmental regulation, of many forms of gambling. However, when it comes to online sports gambling, a stronger case can be made for prohibition due to its addictive potential for youth, its threat to the integrity of sports, and its unbounded nature that leads to problems for states wishing to control revenues and enforce the will of their people. Therefore, it is recommended that online sports gambling be prohibited through the enactment of both the Amateur Sports Integrity Act and the Internet Gambling Prohibition Act, and that prohibition be enforced using the measures discussed above.

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