

Gambling Law Update™
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Advertising Onslaught

The Internet gaming industry continued to be rocked in recent weeks by a series of subpoenas and warning letters issued by the Missouri office of the United States Department of Justice (“DOJ”). The subpoenas, apparently targeting Websites, radio and TV broadcasters, as well as magazine and newspaper publishers, were issued to major sports information networks, media outlets and publishing companies, subpoenaing all records pertaining to advertisements by Internet gaming establishments dating back to 1997, even though no federal statutes specifically prohibit businesses from accepting such advertisements.¹ The initial news of the DOJ’s intent to curtail advertising, marketing, and other financial routes that are currently being pursued surprised many in the gaming industry. The postponement of the Interactive Gaming & Entertainment Expo, which was scheduled for November in Orlando, Florida, sparked concern as many who were set to speak at the Expo had to cancel to tackle this pending situation. Included in the subpoena was a copy of a warning letter the DOJ had issued to all major radio broadcasting networks suggesting they could be in violation of the law by accepting such ads, which could open up media outlets to criminal charges of “aiding and abetting.” The warning letter does not implicitly claim any specific violation. However, it is a misrepresentation of the law at best, and is viewed as an intimidation tactic by many industry leaders.²

¹ Press Release, *DOJ Serves Illegal Subpoenas for Online Gaming*, www.winneronline.com/articles/october2003/doj-serves-illegal-subpoenas-for-online-gaming.htm (10.20.03)

² *Id.*

And the fear continues to spread – Officials with Golden Palace Internet Casino confirmed that representatives from the Howard Stern radio show contacted them, informing them it was no longer running advertisements for interactive gaming operations. A spokesperson with Infinity Broadcasting, which handles the syndication of the Stern show, confirmed that their legal department recently advised programmers to cease carrying all Internet casino and sportsbook ads.³ Published reports also indicated that Clear Channel Communications, an Indiana-based company that operates radio stations and syndicated programs all over the nation, pulled advertisements for Internet casinos and sportsbooks.⁴ Clear Channel admits that it is cooperating with investigators.⁵ Although the courts have not considered the “aiding and abetting” argument in relation to Internet gambling in the past, using laws to impose criminal liability against Internet gambling advertisers is a bit of a stretch, even for a conservative administration. While this novel approach may win brownie points with the right wing conservatives, it would set a dangerous legal precedent, and runs over the Free Speech rights of advertisers who are promoting a service that is legal and licensed in its originating jurisdiction. The idea of “aiding and abetting” Wire Act violations through the promotion of Internet gambling companies has reared its ugly head in recent months; but with so many large enterprises like city newspapers, radio stations, and magazine publications, and accepting advertisements from offshore gaming enterprises over the years, the scope of such an investigation would be particularly overwhelming. This quandary will certainly be the subject of further discussion, and will be hashed out at the upcoming gaming law seminar in Paradise Island: <http://www.fdta-cite.org/Calendar2003/gaming/sched.htm>.

³ Kevin Smith, *Stern, Other Media Outlets Pull Gambling Ads*, www.igamingnews.com/index.cfm?page=artlisting&tid=4598 (10.16.03)

⁴ *Id.*

⁵ Reuters, *Justice Dept. Questions Clear Channel Gambling Ads*, <http://www.reuters.com/newsArticle.jhtml?storyID=3777391> (11.07.03)

Legislative Update

While the status of Internet gambling in the United States remains in constant limbo, both gambling opponents and supporters alike are stepping up last minute efforts in order to tip the scale in their favor. Originally introduced by Senator Jon Kyl (R-AZ), and recently reported by the Committee on Banking, Housing and Urban Affairs, the Kyl Bill, “S. 627” moved on for preparation on the Senate floor and was placed on the Senate Legislative Calendar. As stated in the Senate Report, the Kyl Bill, in essence, makes the receipt of funds from the payments system by the operator of an Internet gambling site, illegal. Because of the anticipated difficulty in enforcing this prohibition against persons outside a particular jurisdiction, the legislation also authorizes the Attorney General (and appropriate State officials) to seek an injunction against any person to prevent or restrain a violation of the ban, or to prohibit banks and other financial service providers from processing any credit card or other financial transaction with a specified illegal Internet gambling site. The Bill also requires the Department of the Treasury, in conjunction with the Federal Reserve Board and the Attorney General, to issue rules requiring each designated payment system, and all of its participants, to identify and prevent transactions barred by the Bill – that is payment to the operators of Internet gambling sites – through establishment of policies and procedures reasonably designed to allow identification and blocking of such transactions and to prohibit the use of payment system services for such transactions.⁶ However, the ranking Democrat on the House Financial Services Committee, Representative Barney Frank (D-Mass.) said there is not enough time and there are too many other issues Congress must deal with before gaming can be considered, which contrasts with the statement of the Bill’s author, Senator Kyl, who predicted last month that Congress would pass

⁶ Senate Report No. 108-173 <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr173&dbname=cp108&>

Internet gambling restrictions before adjourning in 2003. Although Frank is the top Democrat on the committee that crafted the Internet gambling restrictions approved by the House, he adamantly opposed the Bill and said it is fundamentally flawed.⁷ To address concerns raised by the DOJ, Kyl's legislation would prevent Nevada and other states from legalizing Internet wagering within their borders. The American Gaming Association ("A.G.A.") objects to this provision and is attempting to change or remove it through negotiations with Kyl's staff. A.G.A. President Frank Fahrenkopf has charged that the Kyl bill would put casinos at a competitive disadvantage against Indian gaming, state lotteries, and horse and dog racing operations.⁸

Despite gambling opponents best efforts to thwart Internet wagering, the industry is beginning to fight back. The Interactive Gaming Council ("IGC"), in preparation for the many challenges facing the Internet gaming industry including defending against efforts in the United States Congress to ban online gaming, announced the appointment of its new executive committee. The executive committee consists of individuals from IGC member companies, who provide day-to-day direction for the group and report to the IGC Board of Directors. Additionally, in an effort to mobilize the thousands of Americans who enjoy online gambling, the IGC developed a web site, www.ProFreedom.com, through which citizens can ask their Congressional representatives to oppose federal legislation that would block this form of entertainment.⁹ Starting this past month, www.BetonSports.com in connection with www.ProFreedom.com, is giving players the chance to stand up and say "NO" to the prohibitionists in Washington, by taking their message and a petition sheet to the streets. BetonSports.com will sponsor a national petition drive titled, "Don't Tread on My Right . . . To

⁷ Tony Batt, *Democrat Doubtful Internet Gambling Bill Will Pass*, Las Vegas Gaming Wire www.casinocitytimes.com/news/article.cfm?contentID=138908 (10.24.03)

⁸ *Id.*

⁹ Press Release, *Interactive Gaming Council Prepares . . .*, www.igcouncil.org/read_news.php?id=6 (10.26.03)

Wager Online.” The company will have petitions available in their RV, which has been traveling throughout the United States attending professional and college football games. The company’s marketing team has been set up at various “hot spots,” asking for signatures from consumers who want to voice their support for the campaign and their right to play at Internet casinos and wager with Internet sportsbooks.

State’s Gambling Outlook

While state and federal lawmakers are working diligently to push through legislation that would prohibit Internet wagering, gambling advocates around the nation are matching that effort with a push throughout the states for increases in state sanctioned, legalized wagering. One of the legal issues surrounding Florida is the tax liability of cruise ships that leave Florida ports, the so-called “cruises-to-nowhere,” where the ships travel outside of the state’s territorial waters before opening up their casinos, and return to the state several hours later. In an appeal from *New Sea Escape Cruises, Ltd. v. Florida Department of Revenue*, any ship that docks in Florida and leaves state waters to let passengers gamble on it owes state taxes, a state lawyer told the Florida Supreme Court. However, an attorney for the cruise ship in question, New Sea Escape, argues that its ship is exempt because it is a Bahamian vessel engaged in foreign commerce.¹⁰ The State Department of Revenue contends that the company owes more than \$1.4 million in back taxes and penalties for cruises that departed from and returned to Port Everglades in Fort Lauderdale.¹¹ What is at stake for the Department is the up to \$50 million in taxes that they would like to levy on 17 “cruise-to-nowhere” gambling ships leaving Florida’s shores each year. The state says that the cruises, which depart from and return to Port Everglades, fail to stop at a foreign port, making the activity Florida-based and subject to Florida’s use-tax law. Neither side seemed to

¹⁰ Associated Press Release, *Casino Boats Argue Florida Tax Rules*, www.rgtonline.com (10.16.03)

¹¹ *New Sea Escape Cruises, Ltd. v. Florida Dept. of Revenue*, 823 So.2d 161, (Fla.App. 4 Dist. Jun 26, 2002)

win over the justices, who cautiously waded through the notoriously tricky waters of maritime law, gambling regulations and Florida's exemption-riddled tax-code.¹² Complicating matters are the blurry lines of international waters. They begin about three miles offshore – unless a federal crime occurs, in which case United States jurisdiction extends to 12 miles. However, Nicholas Bykowsky, an Assistant Attorney General, pointed out that merely going to international waters does not constitute engaging in foreign commerce. His court briefs argue that New Sea Escape needs to pay up because it uses state services while docked at Port Everglades.¹³ A move to ban the cruises to nowhere died in the legislature last year. Industry lobbyists have said it would be willing to discuss paying more taxes. The Senate plans to release a study in November outlining whether to impose a new tax on the vessels. According to the Florida Day Cruise Association, about 3 million people cruise to nowhere every year.

Meanwhile, interactive betting services are also feeling the push from state and federal lawmakers, and are preparing to fight any challenge to their business necessary. Charles Champion, CEO at Youbet.com, one of the leading interactive race wagering services, said racetracks actually benefit from Internet companies such as Youbet because of the revenue they generate from other states. For example, when a person in New York bets on a race in Texas through Youbet, he explained, that money is transferred into the betting pools at the track. He added that it is the offshore companies that contribute little or nothing to the purses or racetracks and, as a result, damage the sport.¹⁴ The company, which accepts wagers from more than 30 states, operates out of California, where it is one of the state's three license holders for advanced

¹² *Id.* 162-163

¹³ Marc Caputo, *Sea Escape Battles State Over Taxes*, <http://www.miami.com/mld/miamiherald/business/6976553.htm> (10.10.03)

¹⁴ Kevin Smith, *Are Online Race Betting Services Messing with Texas?* <http://www.igamingnews.com/index.cfm?page=artlisting&tid=4593> (10.15.03)

deposit wagering, but offers its services in many states where there is a gray area around Internet wagering.

International Gambling Outlook

In response to a staunch United States position on Internet wagering, new markets are continuing to open up to eagerly fill the void and to snatch up revenue. Stanley Leisure, PLC, announced that one of its joint venture companies, Stanley Fairbet Limited, has entered into a start-up joint venture with Invicta, LLC, to develop a betting business in Romania. The company believes this transaction will have no material earnings impact on its business in the first full year. Finance Director Michael Riddy said the venture would see about 50 sports betting shops being set up in the country in 2004. "They will mainly concentrate on football betting and are a natural extension of operations we already have in Italy and Croatia. We think it will be successful because they are all football mad over there," he added.¹⁵ The company, who has already had great success setting up similar ventures in Croatia, remains confident that its efforts will pay off.

Internet gambling is a multi-billion dollar business that is legal in over 60 jurisdictions, although the United States is not one of them. However, the United States Virgin Islands' Casino Control Commission ("CCC") has approved a license to a hosting company, USVI Host, Inc., to provide hosting services to Internet casinos. USVI Host won't actually operate any Internet gambling sites. Instead, it will provide a secure Internet server and hosting facility for site operators who would like to do so. The company will be required to post a surety bond of \$100,000 with the United States Virgin Island government. The operators are also required to

¹⁵ Press Release, *Romania betting venture*, Daily Post
http://icliverpool.icnetwork.co.uk/0100news/0200businessnews/content_objectid=13546499_method=full_siteid=50061_headline=-Romania-betting-venture-name_page.html (10.23.03)

pay the government a nonrefundable application fee of \$4,000, good for two years, as well as a licensing fee of \$2,000.¹⁶ The decision by the United States Virgin Islands challenges the view of the Federal DOJ that Internet gambling conflicts with the current interpretation of the Wire Act, and is illegal within its borders. The CCC unanimously approved the license after a six-month background investigation into the company, formerly known as VI Technologies Initiative, LLP.

Regardless of continuous efforts to impede on gambling operations, American riverboat operator, Isle of Capri Casinos, Inc., has announced that British regulators have approved an acquisition that would mark the company's move into England. United States operators are betting that Britain will deregulate its market in the next year or so and are lining up projects and alliances in anticipation. Isle of Capri Casinos said it now expects, by the end of the year, to buy a two-third interest in Blue Chip Casinos, PLC, for 5 million pounds or about \$8 million dollars. The remaining one-third interest is held by British private investors. Isle of Capri Casinos regards the United Kingdom as central to its international expansion. The company is planning several additional regional entertainment complexes which will feature an Isle of Capri Casino, as well as development of a local-market Isle Club concept.

Despite Internet gambling being an activity supported by the United Kingdom, PayPal UK is still not considering processing payments for European-targeted Internet gaming sites according to PayPal's European headquarters in Dublin, Ireland.¹⁷ The UK focused PayPal is undoubtedly still feeling the sting of the \$10 million settlement it had to pay as a result of

¹⁶ John Collins, *US Prohibition on Net Gambling to be Tested*, Caribbean Business http://www.puertoricowow.com/html/businessnews-detail.asp?amaspHidden_listActive=true&amaspField_newshd=U.S.%20prohibition%20on%20Net%20gambling%20to%20be%20tested&amaspHidden_newshd_dataType=string (10.15.03)

¹⁷ Press Release, *PayPal Europe No to Gambling*, www.onlinecasinonews.com/ocnv2_1/article.asp?id=4202 (10.15.03)

transacting Internet gaming payments from United States citizens, after its \$1 billion sale to eBay. The Internet gambling industry once relied heavily on PayPal as a preferred payment method, often offering incentives for players who processed their transactions through the company: This is now just a faint memory in the minds of many operators.

Problem Gambling?

A man, plagued by a run of bad luck, voluntarily banned himself from gambling in New Jersey casinos and later violated the ban, and won more than \$64,000 has been ordered to forfeit it. Daniel Santangelo won \$64,160 at Bally's Atlantic City over a 10-week period last year, thereby invoking a clause in the agreement saying self-excluded gamblers “shall not collect any winnings or recover any losses.” Santangelo was among the 163 people who have signed up for the list, which was established by the New Jersey State Casino Control Commission two years ago to help problem gamblers stay away from the tables. Those who put their name the list have their names and photographs distributed to casinos, which are told not to extend them credit, let them play or send them marketing pitches in the mail. In an effort to assist in the understanding of gambling disorders, several major gaming companies, along with proceeds from three charity events have raised more than \$6 million for the National Center for Responsible Gaming (“NCRG”). The center was formed in 1996 by the American Gaming Association, the gambling industry's federal lobbying arm, to raise money for research on pathological gambling. Harrah's Entertainment, Inc., International Game Technology, MGM MIRAGE and Park Place Entertainment Corp. each pledged \$1 million over the next five years. Argosy Gaming Co., Boyd Gaming Corp. and Isle of Capri Casinos, Inc., each pledged \$500,000 over the next five years. Aztar Corp. and Station Casinos, Inc., each pledged \$200,000 over the same period. The Palms casino in Las Vegas pledged \$50,000 over the next five years and the Hard Rock Hotel and

Casino in Las Vegas pledged \$37,500. Two charity golf tournaments in spring yielded \$75,000 for the NCRG and a separate Gaming Hall of Fame dinner in Atlantic City raised \$225,000 for problem gambling research.¹⁸ The NCRG has funded the largest number of grants devoted to gambling research of any organization, including the National Institutes of Health (NIH). The NCRG, in connection with the Institute for Research on Pathological Gambling and Related Disorders, has also developed a research program at Harvard Medical School's Division on Addictions. Established with funding from the NCRG, the study will execute a landmark study of a Missouri government program that allows individuals to ban themselves from the state's casinos. The two-year study – the first-ever scientific investigation of a self-exclusion program – will be funded by a \$297,000 grant awarded to Harvard Medical School by the Port Authority of Kansas City, Missouri, and the Missouri Gaming Commission.¹⁹ The Institute is the only academic research center in the nation devoted exclusively to the study of disordered gambling behavior. According to NCRG Chairman Dennis Eckart, the self-exclusion project is evidence of the impact of the organization and the tremendous progress in the field of gambling research.

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¹⁸ Press Release, *FUNDING*, NCRG.org <http://www.ncrg.org/funding/donors.cfm>

¹⁹ Press Release, *INSTITUTE TO PLAY ROLE IN LANDMARK ANALYSIS OF PROBLEM GAMBLING PROGRAM*, NCRG.org <http://www.ncrg.org/newsroom/detail.cfm?ID=33> (10.15.03)

