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Note

Baby Needs a New Pair of Cybershoes: The Legality of Casino Gambling
on the Internet

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Baby Needs a New Pair of Cybershoes: The Legality of Casino Gambling on the Internet[†]

Nicholas Robbins*

I. INTRODUCTION

A. *Gambling in Cyberspace*¹

“Baby needs a new pair of shoes!” This gambler’s battle cry,² which has long rumbled throughout America, now echoes in cyberspace.³ Gambling, legal in some form in forty-eight states and the District of Columbia, has made its way onto the Internet.⁴ [1]

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¹ William Gibson coined the term “cyberspace” in his science fiction novel *NEUROMANCER*. EDWARD A. CAVAZOS & GAVINO MORIN, *CYBERSPACE AND THE LAW: YOUR RIGHTS AND DUTIES IN THE ON-LINE WORLD 1* (1994). Cyberspace is “a consensual hallucination experienced daily by billions of legitimate operators, in every nation, by children being taught mathematical concepts. . . . A graphic representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity. Lines of light ranged in the nonspace of the mind, clusters and constellations of data. Like city lights, receding” WILLIAM GIBSON, *NEUROMANCER* 51 (1984). For the purposes of this Note, cyberspace represents the seemingly locationless location of multimedia interaction on the Internet. See generally ED KROL, *THE WHOLE INTERNET* (2d ed. 1994) (providing an overview of the Internet).

² Gamblers use this phrase when calling upon fortune and good luck. For instance, a gambler may utter the phrase prior to the throw of the dice in a “craps” game, the twist of the roulette wheel, or the appearance of numbered ping-pong balls in a televised lottery.

³ For a discussion of the recent rise of Internet gambling, see Evan I. Schwartz, *Wanna Bet?* WIRED, Oct. 1995, at 134; James Sterngold, *Imagine the Internet As Electronic Casino*, N.Y. TIMES, Oct. 22, 1995, at E3.

⁴ William M. Bulkeley, *Feeling Lucky? Electronics Is Bringing Gambling Into Homes, Restaurants and Planes*, WALL ST. J., Aug. 16, 1995, at A1 [hereinafter Bulkeley, *Feeling Lucky*].

Imagine—with a flick of a switch, the click of a mouse, and the quick hum of a modem, you can gamble at a “cybercasino.”⁵ You can wander through the cybercasino's carpeted hallways from the comfort of your own home, sit down at a cyber-blackjack table, and play with four anonymous individuals from San Francisco, Moscow, Auckland, and Tokyo.⁶ After winning several hands of blackjack and still feeling lucky, you can move on to the slot machines or the roulette wheel, or maybe decide to count your money while taking in an Elvis impersonator in the cyberlounge.⁷ Before you cash in your chips, though, count them carefully, for this Internet gambling transaction may have violated the law. [2]

Federal law makes it illegal to “engage[] in the business of betting” and to “knowingly use a wire communications facility” to transmit bets or wagering information in interstate or foreign commerce.⁸ Since the Internet consists of “wire communications,” this gambling statute applies to Internet gambling. In June 1995, the National Association of Attorneys General discussed the legality of Internet

⁵ A cybercasino is a virtual reality casino on the Internet.

⁶ See generally I. Nelson Rose, *Computer Gambling*, GROGAN CASINO REP., June 1995, at 12 [hereinafter Rose, *Computer Gambling*].

⁷ Currently, Internet casino sites lack the three-dimensional feel of virtual reality cybercasinos, but the technology is being developed. *Id.*

⁸ 18 U.S.C. § 1084 (1994). Relevant parts provide:
 (a) Whoever being *engaged in the business* of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting events, or contest, or for the transmission of a wire communications 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 not more than \$10,000 or imprisoned not more than two years, or both.
 (b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal. . .
 (d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a . . . law enforcement agency . . . 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 . . . such facility, after a responsible notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency.

Id. (emphasis added).

gambling.⁹ The Missouri Attorney General, Jay Nixon, suggests that he will prosecute anyone who accepts bets from Missouri residents over the Internet.¹⁰ Illinois Attorney General Jim Ryan is considering legal action against cybercasinos.¹¹ The Attorney General of Minnesota, Hubert H. Humphrey III, has brought suit against a sports bookmaking service advertising on the Internet.¹² According to Humphrey, Internet gambling “is unlawful gaming under U.S. and Minnesota law.”¹³ The United States Department of Justice maintains that gambling over the Internet is illegal, but the Department “can’t prosecute anybody controlling gambling outside the U.S.”¹⁴ [3]

This Note analyzes the recent development of Internet gambling, its legality, and some of the applicable federal and state laws. In particular, this Note explores to what degree authorities can apply federal anti-gambling laws to individuals who operate cybercasinos off shore¹⁵ and accept Internet bets from individuals in the United States. Finally, the Note considers whether, if federal law applies to cybercasinos based off shore, technological advancements such as encryption¹⁶ and electronic banking have made the detection of Internet gambling and the enforcement of federal anti-gambling laws virtually impossible. [4]

B. *The Internet*

⁹ I. Nelson Rose, *Wire Cops*, CASINO EXECUTIVE, Aug. 1995, at 22 [hereinafter Rose, *Wire Cops*].

¹⁰ Stu Durando, *Internet Betting Raises Questions*, ST. LOUIS POST-DISPATCH, Jan. 14, 1996, at 8A.

¹¹ *Id.*

¹² Dan Goodin, *On-line Wagering: Place Your Bet On the Internet*, LAS VEGAS REV. J., July 23, 1995, at 1C. See Complaint at 1, *State v. Granite Gate Resorts, Inc.* (Minn. Dist. Ct. 1995) (No. C6-95-0072227).

¹³ Goodin, *supra* note 12, at 1C.

¹⁴ *On-Line Gaming*, SACRAMENTO BEE, Sept. 6, 1995, at C2 (quoting John J. Russell, United States Department of Justice Spokesman).

¹⁵ For the purpose of this Note, “off shore” denotes gambling conducted outside of the United States.

¹⁶ Encryption is a process of encoding or locking confidential information that makes breaking the “lock” virtually impossible without the proper unlocking codes. Encryption enables individuals to send confidential information, such as credit card numbers, medical history, and financial transactions, over the Internet and prevent others from intercepting and reading it. Not only does encryption provide legal transactions with the necessary “absolute privacy,” but it also provides privacy for illegal transactions. For a discussion of the dispute surrounding the efforts to limit encryption technology, see CAVAZOS, *supra* note 1, at 28, 29.

The Department of Defense developed the Internet twenty-five years ago as a means of linking the computer networks of various universities, research centers, and government agencies.¹⁷ Through telephone lines and a “loose confederation” of 5 million computer systems, the Internet now connects about 20 million people from 137 countries.¹⁸ Approximately 9.7 million Americans have access to the Internet and Internet-based casinos.¹⁹ Since 1988, the number of individuals using the Internet has doubled every year.²⁰ [5]

One rapidly developing area of the Internet is the World Wide Web (“Web”).²¹ The Web is a system of “pages” or “sites” consisting of video, interactive graphics, and text.²² “Hyperlinks”²³ connect the pages and enable users to “point and click” their way through the Web. The first page, or screen, of a location on the Web, or “Web site,” is the “home page.”²⁴ [6]

C. Background to The Legalized Gambling Industry

Legalized gambling represents the fastest growing sector of the entertainment business.²⁵ Between 1988 and 1994, annual revenues from casinos nearly doubled,

¹⁷ Mark L. Gordon & Diana J.P. McKenzie, *A Lawyer's Road Map of the Information Superhighway*, 13 J. MARSHALL J. COMP. & INFO. L. 177, 182 (1995).

¹⁸ *Id.*; see also *Internet Survey: The Accidental Superhighway*, ECONOMIST, July 1, 1995, at 1-2; *Hearing on Child Pornography on the Internet Before the Senate Judiciary Comm.*, 104th Cong., 1st Sess. (1995) (testimony of William W. Burrington, Assistant General Counsel of America On-Line) available in WESTLAW, Federal Materials, USTESTIMONY database.

¹⁹ *Re: Gambling - Wire Communications - Lotteries*, AGO 95-70 Fla. Att'y Gen. 2 (Oct. 18, 1995) (citing Steve Lohr, *Who Uses Internet?*, N.Y. TIMES, Sept. 27, 1995, at D5), available on the World Wide Web at <http://legal.firn.edu/units/opinions/95-70.html>.

²⁰ *Internet Survey*, *supra* note 18, at 2.

²¹ In the past year alone, “tens of thousands” of home pages were added to the Web. Joshua Quittner, *Betting on Virtual Vegas*, TIME, June 12, 1995, at 63.

²² *Internet Survey*, *supra* note 18, at 1.

²³ A hyperlink is an “underlined [] word, phrase, or image in a Web document that connects to another part of the document, another document, or even a document on a different server.” THE WORLD ALMANAC AND BOOK OF FACTS 1996, at 168 (1995).

²⁴ *Id.*

²⁵ I. Nelson Rose, *Gambling and the Law— Update 1993*, 15 HASTINGS COMM. & ENT. L.J. 93, 94 (1992) [hereinafter Rose, *Update*].

from \$8 billion to \$15 billion.²⁶ In 1993, 92 million American households gambled at casinos, up from 46 million in 1990.²⁷ In 1994, Americans spent roughly 8.5% of the total national income on legalized gambling.²⁸ In 1995, the amount of money spent on gambling in the United States was projected to reach over \$500 billion.²⁹ Various gambling operations, from casinos to state lotteries, keep approximately 8% of that money, or \$40 billion.³⁰ This amount constitutes more than the net revenues of the United States movie and record industries combined.³¹ [7]

The 1931 legalization of casino gambling in Nevada signaled the beginning of the recent wave of legalized gambling.³² Soon after, “cash-strapped” state governments began legalizing betting on horse races.³³ In 1963, New Hampshire became the first state to reintroduce the state lottery system.³⁴ Since 1963, thirty-five additional states and the District of Columbia have developed lotteries.³⁵ Since Congress enacted the Indian Regulatory Gaming Act,³⁶ casinos have blossomed on Indian reservations throughout the United States.³⁷ Legalized gambling has evolved from complete prohibition through grudging permission to a state of active

²⁶ *Hearings on S. 704 Before the Senate Comm. on Gov't Affairs, 104th Cong., 1st Sess. (1995)* (testimony of Prof. Robert Goodman, gambling expert), available in WESTLAW, Federal Materials, CONGTMY database.

²⁷ *Id.*

²⁸ *Hearing on the Impact of State Gambling Before the House of Rep. Judiciary Comm., 104th Cong., 1st Sess. (1995)* (testimony of Paul Ashe, President of the National Council on Problem Gambling), available in WESTLAW, Federal Materials, CONGTMY database.

²⁹ Schwartz, *supra* note 3, at 134.

³⁰ *Id.*

³¹ *Id.*

³² Rose, *Update, supra* note 25, at 97.

³³ Schwartz, *supra* note 3, at 190.

³⁴ Rose, *Update, supra* note 25, at 96.

³⁵ I. Nelson Rose, *Will Congress Kill the National Indian Lottery?*, LOTTERY PLAYER'S MAG., July/Aug., 1995, at 13 [hereinafter Rose, *Indian Lottery*].

³⁶ 25 U.S.C. §§ 2701-21 (1994).

³⁷ Rose, *Update, supra* note 25, at 101-02.

promotion and participation.³⁸ Simply put, gambling has become a part of daily life.
[8]

Some examples of the expansive nature of gambling prove helpful. In Massachusetts, individuals can choose from approximately twenty instant-scratch cards obtainable at the nearest corner store.³⁹ British Airways may install interactive computers in seat backs for airborne travelers to play blackjack and roulette.⁴⁰ The Coeur d'Alene Indian tribe in Idaho has announced plans for a National Indian Lottery, where individuals can call in from anywhere in the United States to buy tickets to \$50 million jackpots.⁴¹ Churchill Downs, the home of the Kentucky Derby, is developing an interactive computer system that will enable individuals to bet on the races through their televisions, using remote controls.⁴² Many states have relaxed their gambling laws with the hope of creating jobs, economic revival, and increased tax revenues.⁴³ Over the course of sixty-one years, legalized gambling has gone from an isolated act in the desert to something readily accessible on the "electronic frontier" of the Internet. [9]

For many states, Internet gambling poses a serious threat to growing conventional gambling industries.⁴⁴ Money that a state treasury would obtain through taxes on winnings, and through net revenues from legal gambling, instead funnels out of the system to off-shore cybercasinos, and ultimately to off-shore banks. Jason Ader, an analyst with Smith Barney in New York, suggests that the legalization of Internet gambling will create \$10 billion of net revenue for cybercasinos.⁴⁵ This amount will soon reach \$30 billion, and could eventually total \$1 trillion world-wide.⁴⁶ [10]

38 *Id.* at 97.

39 Telephone Interview with Deirdre Coyle, Media Relations Director, Mass. State Lottery Comm. (Jan. 2, 1996).

40 Bulkeley, *Feeling Lucky*, *supra* note 4, at A1.

41 *Id.*

42 *Id.*

43 Paul D. Delva, *The Promise and Perils of Legalized Gambling For Local Governments: Who Decides How to Stack the Deck?*, 68 TEMP. L. REV. 847, 847-48 (1995).

44 Bulkeley, *Feeling Lucky*, *supra* note 4, at A1.

45 Schwartz, *supra* note 3, at 136.

46 *Id.* The \$1-trillion figure originates with Warren B. Eugene, operator of the off-shore cybercasino "Caribbean Casino." William M. Bulkeley, *On-Line: New On-Line Casinos May Thwart U.S. Laws*, WALL ST. J., May 10, 1995, at B1 [hereinafter Bulkeley, *On-Line*].

D. Operating a Cybercasino

If you were to search the Internet through an Internet browser such as NetScape Navigator,⁴⁷ using the keyword “gambling,” you would come across hundreds of gambling-related Web sites.⁴⁸ Some consist of pages about gambling in general, but a growing number of these sites promote Internet gambling services.⁴⁹ Four such gambling services in particular are “Caribbean Casino,”⁵⁰ “Sports International,”⁵¹ “Virtual Vegas,”⁵² and “WagerNet.”⁵³ [11]

Of the four, only Virtual Vegas operates in the United States.⁵⁴ Unlike the other three gambling operations, Virtual Vegas does not offer betting.⁵⁵ Individuals may participate in simulated blackjack or roulette, or even “judge” the “Miss Metaverse” contest, but Virtual Vegas does not allow cash wagers.⁵⁶ David Herschman, co-founder of Virtual Vegas, claims he is simply positioning himself for the legalization of on-line gambling.⁵⁷ Virtual Vegas plans to generate revenue through sales of the CD-ROM Virtual Vegas, which allows users to interact on the Web site in a Las Vegas-like atmosphere.⁵⁸ [12]

⁴⁷ NetScape Navigator is a software program that allows an individual who has Internet access to browse the Web using keywords and pointing and clicking. The browser creates a graphical interface that enables the user to quickly search and locate certain subjects on the Web. Scott Reeves, *IPO Market Rolls Right Along*, DOW JONES INTL. NEWS, July 31, 1995, available in WESTLAW, ALLNEWSPLUS Database.

⁴⁸ See Linda Kanamine, *Gamblers Stake Out The 'Net*, U.S.A. TODAY, Nov. 17, 1995, at A1.

⁴⁹ Jim Impoco, *Laying Off Bets on the Internet*, US NEWS & WORLD REPORT, Jan. 15, 1996, at 60.

⁵⁰ Also known as “The Internet Casinos,” located on the Web at <http://www.casino.org/>.

⁵¹ Located on the Web at <http://www.intersphere.com/bet>.

⁵² Located on the Web at <http://www.virtualvegas.com>.

⁵³ Located on the Web at <http://www.vegas.com/wagernet/waghome.html>.

⁵⁴ See Schwartz, *supra* note 3, at 136-37.

⁵⁵ *Id.* at 136.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Yardena Arar, *Virtual Gambling On-line Casinos Risking Success*, L.A. DAILY NEWS, Oct. 30, 1995, at B1.

Sports International, a subsidiary of the publicly traded company Sports International Ltd., operates an Antigua-based telephone sports book.⁵⁹ Currently, Sports International accepts Internet bets on a limited number of sporting events, including the 1996 NBA championship.⁶⁰ Sports International also has announced a contract with a computer-game maker to develop a three-dimensional cybercasino for the Internet.⁶¹ [13]

Warren Eugene, the Canadian “Bugsy Siegel”⁶² of cyberspace, operates the on-line Caribbean Casino from the Turks and Caicos Islands.⁶³ In July 1995, Caribbean Casino opened on the Internet, taking bets for blackjack games.⁶⁴ Currently, Caribbean Casino offers eighteen games, with themes ranging from “cowboys-in-leather West World to the topless Sex World.”⁶⁵ Eugene plans to license a “full-service casino-software package,” now under development, for \$250,000 plus 15% of net revenues.⁶⁶ Both Cuba and Costa Rica have expressed an interest in acquiring Eugene’s software for a cybercasino.⁶⁷ In addition, Eugene has a \$1.5 million line of credit with a St. Maarten bank, and continues negotiations with an accounting firm to certify the legitimacy of the games.⁶⁸ [14]

59 Dave Bontempo, *Sports Betting at Your Fingertips*, CASINO PLAYER, July 1994, available on the Web at <http://www.intersphere.com/bet/7-94revi.html>; Price Coleman, *Firms Bet on Online Gambling*, ROCKY MOUNTAIN NEWS, Aug. 18, 1995, at 58A.

60 Arar, *supra* note 58, at B1.

61 Quittner, *supra* note 21, at 63.

62 Bugsy Siegel reintroduced casino gambling to Las Vegas during the Depression. Richard Behar, *Special Report: Organized Crime: The Underworld Is Their Oyster*, TIME, Sept. 3, 1990, at 54, 56.

63 Kanamine, *supra* note 48, at A2.

64 Bulkeley, *Feeling Lucky*, *supra* note 4, at A1.

65 Kanamine, *supra* note 48, at A1.

66 Quittner, *supra* note 21, at 64.

67 *Id.*

68 Bulkeley, *On-Line*, *supra* note 46, at B1.

Kerry Rogers, a Las Vegas computer programmer, is setting up WagerNet, the “gamblers’ NASDAQ,”⁶⁹ off shore in Belize.⁷⁰ WagerNet matches gamblers with one another and charges a 2.5% vigorish, or transaction fee, to both gamblers.⁷¹ Unlike the other three on-line gambling operations, WagerNet does not operate from a Web site (although it does advertise on the Web).⁷² Instead, WagerNet provides software that enables subscribers to access the service directly over the Internet.⁷³ Prior to establishing WagerNet, Rogers worked with the Belize National Assembly, modeling their Computer Wager Licensing Act on the gambling laws of Nevada.⁷⁴ Like Eugene of Caribbean Casino, Rogers might license his casino software to various United States Indian Nations.⁷⁵ [15]

In general, similarities exist between the betting and cash-transfer procedures of each casino.⁷⁶ The application process requires completing a simple application and sending a payment for deposit, such as a bank wire.⁷⁷ Opening an Internet account with Sports International requires a minimum of payment of \$25,⁷⁸ whereas WagerNet charges a \$100 setup fee for software⁷⁹ and an initial deposit of

⁶⁹ NASDAQ, or the National Association of Securities Dealers Automated Quotation System, “is a computerized system that provides brokers and dealers with price quotations for securities.” John Downers & Jordan Goodman, *FINANCE AND INVESTMENT HANDBOOK* 354 (1986).

⁷⁰ Bulkeley, *On-Line*, *supra* note 46, at B1.

⁷¹ *Id.* For example, WagerNet matches Gambler A, wishing to bet on the Dallas Cowboys over the San Francisco 49ers by ten points, with Gambler B, who bets the Cowboys will not win by 10 points. *CBS Evening News* (CBS television broadcast, Dec. 20, 1995), available in WESTLAW, CBSEVNEWS database.

⁷² See Goodin, *supra* note 12, at 1C.

⁷³ *Id.*

⁷⁴ Quittner, *supra* note 21, at 63; Schwartz, *supra* note 3, at 137.

⁷⁵ Telephone Interview with Kerry Rogers, head of WagerNet (Oct. 11, 1995).

⁷⁶ See generally Bulkeley, *On-Line*, *supra* note 46, at B1; Quittner, *supra* note 21, at 63; Schwartz, *supra* note 3, at 134.

⁷⁷ International Sports Book Application, located on the Web at <http://www.intersphere.com/bet/rules.html>.

⁷⁸ *Id.*

⁷⁹ WagerNet Home Page, located on the Web at <http://www.vegas.com/wagernet/waghome.html>. In addition to software, WagerNet provides the player with a personal identification number (“PIN”), debt card, and “card reading” machine. The card reading machine attaches to the personal computer. When individuals want to place a bet, they

\$1000 to establish a gambling account.⁸⁰ The Caribbean Casino establishes an off-shore bank account for depositing a player's winnings.⁸¹ A player, using an automatic teller machine ("ATM") card, can withdraw winnings from any ATM in the United States.⁸² For example, Caribbean Casino either wires funds to a player's off-shore bank account,⁸³ or sends the winnings through E-Cash, a Dutch company that handles Internet bank transactions.⁸⁴ Caribbean Casino requires all United States citizens to establish an off-shore bank account before they may gamble.⁸⁵ Each player is individually responsible for reporting his or her winnings to the Internal Revenue Service.⁸⁶ [16]

Current revenue predictions probably underestimate Internet gambling's potential. Experts have difficulty determining with precision the amount of United States gambling revenues and how much is lost to off-shore cybercasinos.⁸⁷ Considering that the industry has yet to develop the full technological potential for three-dimensional virtual reality casinos, the range of available gambling, and the ease of on-line financial transactions, the revenue growth potential is huge. For example, Sports International's annual net revenue has grown from \$2.4 million in 1994 to \$6 million today.⁸⁸ By the end of 1996, Sports International expects to have accepted close to \$60 million in wagers from its combined telephone and Internet operations.⁸⁹ Two thousand individuals have already pre-registered to gamble on Caribbean Casino as of June 1995.⁹⁰ Eugene maintains that 25,000 people have registered to play and 2,800 bet regularly.⁹¹ [17]

log on to WagerNet over the Internet and run the debt card, which contains personal information and an account balance on a magnetic strip, through the machine. Goodin, *supra* note 12, at 1C.

⁸⁰ WagerNet Agreement, "Terms and Conditions," Article 2.1, located on the Web at <http://www.vegas.com/wagernet/terms.html>.

⁸¹ See Bulkeley, *On-Line*, *supra* note 46, at B1.

⁸² See Bontempo, *supra* note 59, at 1.

⁸³ Bulkeley, *On-Line*, *supra* note 46, at B1.

⁸⁴ Bulkeley, *Feeling Lucky*, *supra* note 4, at A1.

⁸⁵ Kanamine, *supra* note 48, at A2.

⁸⁶ Bontempo, *supra* note 59, at 1.

⁸⁷ See Bulkeley, *On-Line*, *supra* note 46, at B1.

⁸⁸ Schwartz, *supra* note 3, at 137.

⁸⁹ Arar, *supra* note 58, at B1.

⁹⁰ Bulkeley, *On-Line*, *supra* note 46, at B1.

Eugene predicts that United States gamblers will be the biggest market for Internet casinos.⁹² As of 1990, individuals placed approximately \$48 billion worth of illegal bets in the United States.⁹³ The Super Bowl alone generates \$4 billion in illegal wagers nationwide, compared with \$60 million wagered legally in Las Vegas annually.⁹⁴ In addition, 15,000 individuals have registered for WagerNet.⁹⁵ Using these figures, if only 1% of the individuals betting illegally on the Super Bowl placed their bets through the Internet, approximately \$4 million would be funneled through these Internet services away from conventional gambling. Had WagerNet operated for the 1995 Super Bowl, Kerry Rogers estimates that patrons would have placed \$15 million in bets through WagerNet.⁹⁶ Due to increased consumer awareness of Internet gambling and eventual technological improvements, Internet gambling has the potential to become an extremely lucrative industry. [18]

E. *Legal Positions of the Cybercasino Operators*

Internet casino operators claim to offer consumers a form of legal gambling.⁹⁷ Caribbean Casino, Sports International, and WagerNet all provide various rationales for the legality of their services. Warren Eugene of Caribbean Casino suggests that his Canadian citizenship and the operation of his casino from outside the United States allow him to avoid United States gambling laws, despite his United States clientele.⁹⁸ As a precaution, Eugene promises to accept a percentage of “play-money” bets to prevent United States authorities from finding out which individuals truly gamble.⁹⁹ Even though he sees the United States as his casino’s biggest market, his cybercasino “warns Americans . . . to stay away.”¹⁰⁰ [19]

91 Kanamine, *supra* note 48, at A2.

92 *Id.*

93 Bontempo, *supra* note 59, at 1.

94 Durando, *supra* note 10, at 8A.

95 *Id.*

96 *Id.*

97 Schwartz, *supra* note 3, at 136.

98 Bulkeley, *On-Line*, *supra* note 46, at B1; Quittner, *supra* note 21, at 63.

99 Bulkeley, *On-Line*, *supra* note 46, at B1.

100 Kanamine, *supra* note 48, at A2.

The United States gambling laws do not intimidate Mike Simone, a Philadelphian who operates the Antigua-based Sports International.¹⁰¹ Simone's lawyers conclude that the international status of the company, and the use of no United States agents, prevents the application of United States law to the company's activities. Thus, its activities do not violate the federal prohibition on sports betting over interstate telephone and wire communications.¹⁰² To date, Sports International has not had "any contact from any government agency regarding [its] Internet activity."¹⁰³ [20]

Kerry Rogers's WagerNet, currently based in Nevada, and still in the testing phase, hopes to be in operation for the 1996 American football season.¹⁰⁴ The WagerNet advertisement on the Web promises to "provide sports fans with a legal way to bet on sporting events from anywhere in the world . . . 24 Hours a Day!"¹⁰⁵ At the bottom of the advertisement, WagerNet warns gamblers to "PLEASE CONSULT YOUR LOCAL, COUNTY, AND STATE AUTHORITIES REGARDING RESTRICTIONS ON OFF-SHORE SPORTS BETTING VIA TELEPHONE."¹⁰⁶ Under section 8.2 of its Terms and Conditions Agreement, WagerNet cites federal anti-gambling law,¹⁰⁷ claiming that it applies only to individuals "engaged in the business of betting or wagering,"¹⁰⁸ and that the subscribers warrant they "are using the WagerNet system for [their] own personal use."¹⁰⁹ Oscar Goodman, an attorney for WagerNet, explains that section 1084's "business of betting" language does not apply to WagerNet, because WagerNet is a brokerage service.¹¹⁰ None of the three off-shore sites, however, ban or block participation from the United States.¹¹¹

101 Bontempo, *supra* note 59, at 1.

102 *Id.*

103 Bulkeley, *Feeling Lucky*, *supra* note 4 (quoting Jeffrey Erb, Sports International Spokesman).

104 Durando, *supra* note 10, at 8A.

105 WagerNet Home Page, located on the Web at <http://www.vegas.com/wagernet/waghome.html>.

106 *Id.*

107 WagerNet Agreement, *supra* note 80, Article 8.2.

108 18 U.S.C. § 1084(a) (1994).

109 WagerNet Agreement, *supra* note 80, Article 8.2..

110 Goodin, *supra* note 12, at C1.

111 *On-Line Gaming*, *supra* note 14, at C2.

Minnesota, the first state to take legal action against an off-shore cybercasino, has filed a claim in state court against WagerNet for false advertising.¹¹² [21]

The three off-shore Internet casinos all claim that their international status exempts them from the United States gambling laws. In addition, WagerNet suggests that regardless of jurisdiction, a “brokerage service” does not fall within the scope of section 1084. As mentioned above, the United States seems to have acquiesced to the general position that it cannot “prosecute anybody controlling gambling outside the [United States].”¹¹³ The United States does not make clear whether it bases this position on legal interpretation or on the practicality of law enforcement. [22]

Given the language of federal anti-gambling laws, authorities probably can, in fact, apply them to Internet casinos. Before discussing the extraterritorial effect and application of the federal anti-gambling laws, one must have a clear understanding of the various prohibitions against transmitting wagering information and devices in interstate and intrastate commerce. [23]

II. PROHIBITING WAGERING ON THE INTERNET

A. Applying Section 1084 to Transmission of Wagering Information

In 1961, Congress enacted 18 U.S.C. § 1084 to suppress illegal “organized gambling activity,”¹¹⁴ assist the states in the enforcement of anti-gambling measures, and allow federal intervention in interstate gambling.¹¹⁵ Aware of the importance of the rapid “transmission of gambling information,” Congress devised a means to combat organized gambling by denying gamblers the availability of interstate wire communications facilities.¹¹⁶ Even legalized gambling services, such as lotteries and state-licensed casinos, cannot transmit gambling “wagers or information” in “interstate or foreign commerce” for the purpose of gambling.¹¹⁷ [24]

112 *Id.*; Complaint, *supra* note 12.

113 *On-Line Gaming*, *supra* note 14, at C2 (quoting John Russell, Department of Justice Spokesman).

114 H.R. REP. NO. 967, 87th Cong., 1st Sess. 2631 (1961).

115 *Martin v. United States*, 389 F.2d 895, 898 (5th Cir. 1968).

116 H.R. REP. NO. 967, *supra* note 114, at 2631.

117 18 U.S.C. § 1084(a); I. Nelson Rose, *Interstate Betting*, CASINO EXECUTIVE, June, 1995, at 22 [hereinafter Rose, *Interstate Betting*].

Section 1084 does not define “transmission.” The Federal Courts of Appeals have split on whether to limit transmission to “sending”¹¹⁸ information, or whether to include “receiving” information as well.¹¹⁹ The issue becomes especially problematic with communication over the Internet.¹²⁰ For example, does the act of merely logging on to a cybercasino qualify as a transmission under section 1084? According to Thomas Pursell, Minnesota Deputy Attorney General, logging on to a cybercasino does qualify as a transmission.¹²¹ When the individual logs on to the cybercasino, the cybercasino returns a signal containing images and information to that individual. Like a telephone transmission, gambling at a cybercasino involves a “mutuality of transmission,” sending and receiving electrons in both directions between the cybercasino and the individual.¹²² In the context of section 1084, the mere acceptance of the bet through an interstate telephone call, even if initiated by the other party, constitutes a transmission “consistent with both the language and purpose” of section 1084.¹²³ Therefore, if an individual logs on to a cybercasino and the cybercasino accepts the bet, this constitutes a transmission under section 1084. Whether a court decides to adopt the “sending” or the “receiving” interpretation of section 1084’s transmission qualification, the Internet gambling transaction should meet the transmission requirement.¹²⁴ [25]

To violate section 1084 requires the transmission of betting information using interstate wire communication while engaged in the “business of betting.”¹²⁵ The

118 See, e.g., *United States v. Stonehouse*, 452 F.2d 455, 457 (7th Cir. 1971) (holding that a ticker tape transmission failed to meet the transmission requirement of section 1084(a) because transmission does not encompass mere reception).

119 See, e.g., *United States v. Tomeo*, 459 F.2d 445, 447 (10th Cir. 1972) (holding that “transmission” included sending and receiving; the court found that limiting transmission merely to the “isolated sending of messages does not meet the basic purpose of the statute [and] it is unlikely in framing section 1084(a) that Congress considered betting transactions to move in but one direction in the use of the telephone”).

120 See Complaint, *supra* note 12, at 1.

121 Telephone Interview with Thomas Pursell, Deputy Attorney General, Minnesota Attorney General’s Office (Jan. 3, 1996).

122 *Id.*

123 *Sagansky v. United States*, 358 F.2d 195, 200 (1st Cir.), *cert. denied*, 385 U.S. 816 (1966) (finding “transmission” when one uses an interstate telephone to accept bets and wagers as part of business).

124 18 U.S.C. § 1084(a).

125 *Id.*; *Trunchinski v. United States*, 393 F.2d 627, 630 (8th Cir. 1968).

statute makes it illegal for a “bookie” or individual in the “business of betting” to use the telephone to gamble, but does not make it a federal crime for a casual gambler, not in the business of betting, to place a bet across interstate lines via the telephone.¹²⁶ For example, if a casual gambler living in California or Massachusetts places a bet over the Internet to a cybercasino in Antigua, that individual has not violated section 1084.¹²⁷ Questions of jurisdiction aside, however, the cybercasino in the “business of betting” would violate section 1084 in that same transaction.¹²⁸ [26]

Although the casual player would not violate federal law, the casual player’s place of residence may have a state law that prohibits gambling. For example, title 9 of the California Penal Code makes it illegal for a person to wager, and makes it illegal to transmit “information as to wagers” over the telephone.¹²⁹ In Massachusetts, state law prohibits the use of the telephone to wager.¹³⁰ Thus, when a casual gambler residing in California or Massachusetts gambles over the Internet, that individual violates state law, even if not federal law. Unlike section 1084, the Massachusetts and California prohibitions on gambling affect the casual gambler and the individual in the “business of betting” alike.¹³¹ Nevertheless, law enforcement officials rarely arrest casual bettors.¹³² With regard to the California law, Professor I. Nelson Rose states that he “d[oes] not know of any case where a casual gambler has been arrested.”¹³³ [27]

Although subsection (a) of 1084 bars gambling businesses from using interstate wire communications to transmit betting information,¹³⁴ subsection (b) contains two important exceptions.¹³⁵ First, federal law “shall not be construed to prevent” the “bona fide” transmission of sporting news or contests in interstate

126 Rose, *Interstate Betting*, *supra* note 117, at 22.

127 *Id.*

128 *Id.*

129 CAL. PENAL CODE § 337(a),(i) (West 1988).

130 MASS. GEN. L. ch. 271, § 17 (West 1995).

131 *Id.*; CAL. PENAL CODE § 337(a).

132 Rose, *Interstate Betting*, *supra* note 117, at 22.

133 I. Nelson Rose, *Gambling & the Law*, REPLAY MAGAZINE, July 1995, at 47 [hereinafter Rose, *Gambling*].

134 18 U.S.C. § 1084(a); H.R. REP. NO. 967, *supra* note 114, at 2632.

135 H.R. REP. NO. 967, *supra* note 114, at 2632.

commerce.¹³⁶ Second, federal law allows “transmissions” to assist “in the placing of bets” between two states, or a state and a foreign country, if both jurisdictions permit betting.¹³⁷ More importantly, section 1084 allows businesses to post news related to gambling on the Web, such as state lottery scores or the results of a horse race.¹³⁸ The results of several state lotteries are now posted on the Web.¹³⁹ Courts have interpreted section 1084(b) to allow the transmission of information that pertains to gambling, such as newscasts or newspapers reporting lottery scores and horse racing results.¹⁴⁰ Under this standard, a Web site can legally report the results of “sporting events or contests,” even if a gambler uses these results later in a gambling transaction.¹⁴¹ [28]

As mentioned above, section 1084(b) exempts certain interstate gambling-related transactions from section 1084’s general prohibitions. For instance, if a hypothetical cybercasino based in Las Vegas accepts bets over the Internet from a state with similar legalized gambling, that transaction does not violate section 1084.¹⁴² Although by accepting the out-of-state bet, the Las Vegas-based cybercasino may have violated that state’s bar against using the telephone to gamble,¹⁴³ if the Internet transmission occurs between two states with legalized gambling, then no federal violation under section 1084(b) has occurred.¹⁴⁴ [29]

B. *Applying the Professional and Amateur Sports Protection Act*

Under section 3702 of the Professional and Amateur Sports Protection Act (“Sports Protection Act”), a person may not operate a “wagering scheme based,

¹³⁶ 18 U.S.C. § 1084(b).

¹³⁷ *Id.*

¹³⁸ H.R. REP. No. 967, *supra* note 114, at 2632.

¹³⁹ A list of state lottery results can be found on the Web at http://www.connect.org.uk/lottery/Links/Results_US.html.

¹⁴⁰ *Kelly v. Illinois Bell Tel. Co.*, 325 F.2d 148, 151-52 (7th Cir. 1963).

¹⁴¹ 18 U.S.C. § 1084(b).

¹⁴² *See Rose, Interstate Betting*, *supra* note 117, at 23.

¹⁴³ *See id.*; MASS. GEN. L. ch. 271, § 17.

¹⁴⁴ If the individual operating a cybercasino chooses to maintain a sports book or betting service, he or she may have violated the Professional and Amateur Sports Protection Act (“Sports Protection Act”). 28 U.S.C. §§ 3701-3704 (1993); *see infra* notes 145-48 and accompanying text.

directly or indirectly . . . on . . . competitive games in which amateur or professional athletes participate.”¹⁴⁵ By its definition, this law should apply to cybercasinos that offer sports gambling. Unlike section 1084, the Sports Protection Act does not require the use of interstate wire transmissions for a violation to occur.¹⁴⁶ Thus, the law should prevent most Internet-based sport-betting operations. Under section 1084(b), casinos may only accept sports bets from jurisdictions with legalized sports betting.¹⁴⁷ The Sports Protection Act effectively limits that area to Nevada.¹⁴⁸ Therefore, in order to accept lawful Internet sports wagers on college or professional football, the casino must be located in Nevada and only accept Internet wagers from residents of Nevada. [30]

C. *The Interstate Transportation of Wagering Paraphernalia Act*

The Interstate Transportation of Wagering Paraphernalia Act¹⁴⁹ (“ITWPA”) creates another federal barrier to Internet gambling. The ITWPA specifically prohibits the distribution of materials for illegal gambling activity in interstate or foreign commerce.¹⁵⁰ Section 1953(a) of the ITWPA prohibits any individual, except a “common carrier,” from “knowingly” introducing gambling paraphernalia into interstate or foreign commerce.¹⁵¹ Subsection (b) provides an exception for the gambling paraphernalia transported into a state for legalized gambling.¹⁵² Although the ITWPA exempts newspapers,¹⁵³ the Supreme Court held that the interstate transportation of newspapers containing gambling information for the specific

¹⁴⁵ 28 U.S.C. § 3702(2).

¹⁴⁶ 28 U.S.C. §§ 3701-3704. There are a few important exceptions to this broad prohibition on sports betting. The law exempts betting on “pari-mutuel animal racing or jai-alai games” or sports gambling already operating in Nevada. 28 U.S.C. § 3704(a)(4); S. REP. NO. 102-248, 102d Cong., 2d Sess. 8 (1992). In addition, the law was written to exempt Oregon and Delaware, which created sports-based lotteries prior to the introduction of the legislation. S. REP. NO. 102-248 at 8.

¹⁴⁷ 18 U.S.C. § 1804(b).

¹⁴⁸ 28 U.S.C. § 3704(a)(4).

¹⁴⁹ 18 U.S.C. § 1953.

¹⁵⁰ 18 U.S.C. § 1953.

¹⁵¹ 18 U.S.C. § 1953(a).

¹⁵² 18 U.S.C. § 1953(b).

¹⁵³ 18 U.S.C. § 1953(b)(3).

purpose of conducting illegal gambling violates yet another law, the Travel Act.¹⁵⁴ [31]

The ITWPA could “erect[] a substantial barrier” to the ability of law enforcement to curtail the operation of Internet gambling.¹⁵⁵ For example, for an individual to wager through WagerNet, WagerNet must send computer software and hardware to the subscriber.¹⁵⁶ If the subscriber resides in a state without legalized casino gambling, sending such hardware and software through interstate commerce could violate the ITWPA. [32]

In *United States v. Mendelsohn*,¹⁵⁷ the defendants were convicted under the ITWPA for the interstate shipment of gambling software.¹⁵⁸ The court found that software designed for “recording and analyzing bets” constituted a “device” within the meaning of the ITWPA.¹⁵⁹ The court held that software merely “designed for use in”¹⁶⁰ illegal gambling also falls within the scope of the statute.¹⁶¹ Under this interpretation of the ITWPA, software shipped through interstate commerce that simply enables a subscriber to log on to an Internet casino for illegal gambling should violate federal law. Furthermore, shipping hardware, such as a “card swipe machine” and a membership card with a magnetic strip (which records the subscriber’s gambling account information), should violate the ITWPA. As with software, the hardware qualifies as a “device . . . designed for”¹⁶² illegal gambling. Although the software and hardware may have a legal use, this does not “immunize . . . [the] illegal use.”¹⁶³ [33]

¹⁵⁴ *Erlenbaugh v. United States*, 409 U.S. 239, 248 (1972). The Travel Act broadly prohibits the use of interstate travel or “the facilities of interstate commerce” to further criminal activity. 18 U.S.C. § 1952 (1994); see also *infra* note 219.

¹⁵⁵ See *Erlenbaugh*, 409 U.S. at 246.

¹⁵⁶ *Goodin*, *supra* note 12, at 1C.

¹⁵⁷ 896 F.2d 1183 (9th Cir. 1989).

¹⁵⁸ *Mendelsohn*, 896 F.2d at 1184.

¹⁵⁹ *Id.*

¹⁶⁰ 18 U.S.C. §§ 1953(a)-(c).

¹⁶¹ *Mendelsohn*, 896 F.2d at 1187.

¹⁶² 18 U.S.C. § 1953(a).

¹⁶³ *Mendelsohn*, 896 F.2d at 1187.

The meaning of “device” has been interpreted broadly, in keeping with Congressional intent to “permit law enforcement to keep pace with the latest developments”¹⁶⁴ in illegal gambling. Given this broad interpretation, sending gambling software through the Internet to the subscriber’s personal computer, as opposed to mailing it, should also violate the ITWPA. Downloaded software, like mailed software, should still fall within *Mendelsohn*'s broad definition of “device.”¹⁶⁵ Moreover, by applying the ITWPA's language to downloaded software,¹⁶⁶ the law can respond to illegal gambling’s “great ingenuity in avoiding the law.”¹⁶⁷ Transporting software through the Internet from one jurisdiction to another should qualify as transporting a “device” through “interstate or foreign commerce.”¹⁶⁸ [34]

D. *State of Minnesota v. Granite Gate Resorts, Inc.*

In July 1995, Herbert H. Humphrey III, Attorney General of Minnesota, filed a complaint in state court against Granite Gate Resorts, Inc. (“Granite”) and its President and Chief Executive Officer, Kerry Rogers.¹⁶⁹ The State of Minnesota claims that Granite and Kerry Rogers presently engage in deceptive trade practices, false advertising, and consumer fraud.¹⁷⁰ Minnesota claims that WagerNet’s advertising “explicitly misrepresents that . . . [WagerNet’s] services are lawful.”¹⁷¹ Minnesota seeks to enjoin WagerNet from advertising in Minnesota over the Internet, prohibit WagerNet from offering its services in Minnesota, impose civil penalties of \$25,000 on WagerNet, and award restitution to Minnesota residents who have subscribed to the WagerNet service.¹⁷² [35]

164 *Id.* (citing S. REP. NO. 589, 87th Cong., 1st Sess. 3 (1961)).

165 *Id.*

166 18 U.S.C. § 1953(a).

167 *Mendelsohn*, 896 F.2d at 1187.

168 18 U.S.C. § 1953(a).

169 Complaint, *supra* note 12, at 2. Granite and Kerry Rogers operate WagerNet. Stephen Pizzo, *WagerNet: Fast Talk, Fast Walk*, WEB REV. Oct. 27, 1995, located on the Web at <http://www-e1c.gnn.com/gnn/wr/oct27/news/natl/wagernet.html>.

170 Complaint, *supra* note 12, at 7-8.

171 Bulkeley, *Feeling Lucky*, *supra* note 4, at A1; see Complaint, *supra* note 12, at 6.

172 Complaint, *supra* note 12, at 10.

Kerry Rogers argues that Minnesota does not have jurisdiction over his Nevada-based service, because WagerNet did not avail itself to Minnesota; rather, the residents of Minnesota “went” to the advertisement based in Nevada through the Internet.¹⁷³ Rogers’s motion to dismiss the complaint for lack of personal jurisdiction explains that Minnesota has no more jurisdiction than if a Minnesotan went to a Minnesota public library and looked up WagerNet in a Las Vegas phone book on reserve.¹⁷⁴ Rogers argues that he has not directed the activity at the citizens of Minnesota simply by placing the WagerNet advertisement on the Internet, and, thus, he has not “consented to personal jurisdiction” in Minnesota.¹⁷⁵ Moreover, Rogers asserts that WagerNet lacks the minimum contacts required for Minnesota to assert personal jurisdiction.¹⁷⁶ He argues that the placement of the advertisement on the Web lacks the required “relationship among the defendant, the forum, and the litigation.”¹⁷⁷ Rogers suggests that Minnesota cannot reasonably claim personal jurisdiction because he has not deliberately “engaged in significant activity within [the] state.”¹⁷⁸ Placing the WagerNet advertisement on the Web was not “purposely directed towards the forum state;”¹⁷⁹ therefore, Minnesota cannot maintain personal jurisdiction. [36]

Notwithstanding Rogers’s analysis, if WagerNet accepts a subscriber from Minnesota it may indeed have “create[d] a continuing obligation between itself and residents of the forum.”¹⁸⁰ As of the writing of this Note, the court had yet to rule on Rogers’s motion to dismiss.¹⁸¹ [37]

173 Telephone Interview with Kerry Rogers (Oct. 10, 1995).

174 Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction at 4, *State v. Granite Gate Resorts, Inc.* (Minn. Dist. Ct. 1995) (No. C6-95-0072227) (filed Sept. 25, 1995).

175 *Id.*

176 *Id.* at 6.

177 *Id.* at 4 (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

178 *Id.* at 5-6 (quoting *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 112 (1987)).

179 *Id.*

180 *Id.* at 4 (quoting *Burger King*, 471 U.S. at 478).

181 Telephone Interview with Thomas Pursell, Deputy Attorney General of Minnesota (Apr. 3, 1996). See *State’s Memorandum in Opposition to Defendant’s Motion to Dismiss*, *State v. Granite Gate Resorts, Inc.* (Minn. Dist. Ct. 1995) (No. C6-95-0072227) (filed March 15, 1995) available on the Web at <http://www.state.mn.us/ebranch/ag/brief.txt>.

Minnesota has made it clear that it considers accepting wagers over the Internet from residents of Minnesota a violation of federal and state law.¹⁸² The Minnesota Attorney General's Office now posts a personal jurisdiction memorandum on the Internet for Internet users and providers.¹⁸³ The warning targets individuals who offer sports betting, lotteries, and cybercasinos over the Internet to residents of Minnesota.¹⁸⁴ Minnesota asserts that out-of-state individuals who knowingly offer their services to Minnesota residents violate the law.¹⁸⁵ Under Minnesota law, individuals outside the state fall under the state's jurisdiction if they "intentionally cause[] a result within the state prohibited by the criminal law of this state."¹⁸⁶ [38]

Minnesota also warns Internet users that the principles of personal jurisdiction "apply equally to activities on the Internet."¹⁸⁷ Finally, Minnesota warns Internet providers and credit card companies "who knowingly assist" illegal Internet gambling operations that they could face accomplice liability.¹⁸⁸ Under Minnesota law, once the credit card company or the Internet provider has notice of its unknowing involvement, it can be prosecuted as an accomplice if it "continue[s] to provide services to the gambling organizations."¹⁸⁹ Targeting the Internet provider or credit card company provides Minnesota with another avenue for preventing Internet gambling, considering the practical difficulties involved in reaching off-shore cybercasinos. [39]

182 Rose, *Interstate Betting*, *supra* note 117, at 25.

183 *Warning To All Internet Users and Providers*, Minnesota Attorney General's Office, located on the Web at <http://www.state.mn.us/ebranch/ag/memo.txt>.

184 *Id.* at 2.

185 *Id.* at 1.

186 MINN. STAT. ANN. § 609.025 (West 1994). In *State v. Rossbach*, 288 N.W.2d 714 (Minn. 1980), the Minnesota Supreme Court upheld the conviction of an individual who fired a gun out of an Indian Reservation and struck another individual standing in Minnesota. *Id.* at 715. The court held that Minnesota had jurisdiction over Rossbach because the "situs of the crime" occurred within Minnesota jurisdiction. *Id.* Furthermore, Minnesota has successfully exercised jurisdiction over individuals who mailed illegal gambling equipment into Minnesota from Iowa. *State v. Brown*, 486 N.W.2d 816, 817-18 (Minn. Ct. App. 1992).

187 *Warning To All Internet Users and Providers*, *supra* note 183, at 2.

188 *Id.* at 4.

189 *Id.*

If Minnesota wins its civil case, the court will enjoin WagerNet from advertising its services via the Web to residents of Minnesota.¹⁹⁰ The question remains, however, of how to block the access of residents of a single state to a particular Internet service. What happens when WagerNet moves off shore to Belize? Once it operates from Belize, Minnesota can do very little to prevent WagerNet from providing its services to the residents of Minnesota, short of requiring all Minnesota residents to use a state-run server for access to the Internet.¹⁹¹ Current technology renders it impossible to prevent a resident of Minnesota with Internet access from reaching WagerNet's Web site.¹⁹² [40]

The off-shore cybercasino operators suggest that United States law enforcement cannot reach activity conducted outside of the United States. As shown above, however, case law suggests the opposite. Reaching the off-shore cybercasino depends on a successful assertion of jurisdiction and on the ability in practice to enforce the law. [41]

III. EXTRATERRITORIAL JURISDICTION OVER OFF-SHORE INTERNET CASINOS

A. Overview of Extraterritorial Jurisdiction

Some have suggested that a shield of "national sovereignty" protects off-shore Internet casino operators.¹⁹³ Case law and applicable statutes, however, suggest that law enforcement can pierce the shield. Courts have long held that Congress can "attach extraterritorial effect to its penal enactments,"¹⁹⁴ and the United States can exercise jurisdiction over its citizens who commit offenses

¹⁹⁰ See Complaint, *supra* note 12, at 1.

¹⁹¹ Joseph Kahn et al., *Chinese Firewall -- Beijing Seeks to Build Version of Their Internet That Can Be Censored*, WALL ST. J., Jan. 31, 1996, at A4. Through such a server, the state could censor and block Web sites from the residents of Minnesota. Using software such as NetNanny, parents can block out certain Web sites. *Hearing on Child Pornography on the Internet Before the Senate Judiciary Comm.*, 104th Cong., 1st Sess. (1995) (testimony of William W. Burrington, Assistant General Counsel of America On-Line), available in WESTLAW, Federal Materials, USTESTIMONY database. NetNanny contains lists of Web sources containing explicit sexual material. When a user attempts to access a Web site, NetNanny compares it to a list of prohibited sites. Peter H. Lewis, *Limiting a Medium Without Boundaries*, N.Y. TIMES, Jan. 15, 1996, at D4.

¹⁹² Telephone Interview with Thomas Pursell, Deputy Attorney General of Minnesota (Jan. 3, 1996).

¹⁹³ Rose, *Interstate Betting*, *supra* note 117, at 22.

¹⁹⁴ *United States v. Baker*, 609 F.2d 134, 136 (5th Cir. 1980).

abroad.¹⁹⁵ For example, if a United States citizen commits a crime in Antigua, the United States government can exercise jurisdiction over that individual.¹⁹⁶ Although it remains unclear whether in practice the federal government can exercise jurisdiction over a foreign national operating an off-shore cybercasino who breaks United States anti-gambling law from a Web site, in theory the United States can exercise jurisdiction if the alleged offense partially occurred within the United States,¹⁹⁷ or was intended to produce an effect in the United States.¹⁹⁸ [42]

The recent and notable criminal prosecution of Manuel Antonio Noriega relied on extraterritorial jurisdiction.¹⁹⁹ The United States government charged Noriega with several federal “narcotics-related offenses,”²⁰⁰ including knowingly distributing a controlled substance for import into the United States under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (“Control Act”).²⁰¹ Noriega’s criminal activities occurred outside of the United States, in Panama and Cuba.²⁰² The court found, however, that on its face the Control Act “‘intended to reach acts . . . committed outside the territorial jurisdiction of the United States.’”²⁰³ Thus, the Control Act’s language explicitly provided for extraterritorial jurisdiction.²⁰⁴ Unlike the language in the Control Act, however, the language in section 1084 and the ITWPA does not expressly grant extraterritorial jurisdiction. When statutes are silent on this issue, courts usually apply a presumption against the extraterritorial application of United States laws.²⁰⁵ [43]

195 United States v. Columbia-Colella, 604 F.2d 356, 358 (5th Cir. 1979).

196 *Id.*

197 United States v. Moncini, 882 F.2d 401, 404 (9th Cir. 1989).

198 United States v. Noriega, 746 F. Supp. 1506, 1551 (S.D.Fla. 1990).

199 See *Noriega*, 746 F. Supp. at 1511 (outlining the United States invasion of Panama and the events leading up to Noriega's arrest).

200 *Noriega*, 746 F. Supp. at 1509.

201 21 U.S.C. § 959 (1994).

202 *Noriega*, 746 F. Supp. at 1512.

203 *Id.* at 1515 (quoting 21 U.S.C. § 959(c) (1988)).

204 *Id.*

205 United States v. Benitez, 741 F.2d 1312, 1316-17 (11th Cir. 1984).

Courts will allow the United States to “secure itself from injury . . . beyond the limits of its territory”²⁰⁶ when Congress intends extraterritorial application.²⁰⁷ In the absence of explicit language, a court can still establish extraterritoriality “if the nature of the law permits it and Congress intends it.”²⁰⁸ According to the Supreme Court, “[t]he necessary *locus*, when not specially defined, depends on the purpose of Congress as evinced by the description and nature of the crime and upon the territorial limitations upon the power and jurisdiction of a government to punish crime under the law of nations.”²⁰⁹ [44]

Section 1084 lacks any restriction to the locus or type of gambling. It only requires that an individual in the “business of betting” use “wire communication” in “interstate or foreign commerce” in order to violate its provisions.²¹⁰ Section 1084's legislative history illustrates that Congress intended to prohibit the “transmission of certain gambling information in interstate and foreign commerce”²¹¹ by denying the “availability of wire communication” for illegal gambling.²¹² Congress adopted broad language to afford law enforcement the opportunity to reach beyond jurisdictional borders to prevent illegal gambling.²¹³ [45]

Congressional intent can further be inferred by contrasting section 1084 with the Prohibition of Illegal Gambling Businesses Act (“Gambling Business Act”).²¹⁴ The Gambling Business Act makes it a federal crime to operate a gambling business with five or more individuals in a state where gambling is illegal.²¹⁵ The Gambling Business Act's language explicitly limits enforcement to gambling operations with a locus in a “[s]tate or political subdivision”²¹⁶ of the United States. Unlike the

206 Church v. Hubbard, 6 U.S. (2 Cranch) 187, 234 (1804) (Marshall, C.J.).

207 *Id.*

208 *Id.*

209 United States v. Bowman, 260 U.S. 94, 97-98 (1922).

210 18 U.S.C. § 1084(a). For example, section 1084 criminalizes using the telephone in interstate or foreign commerce to gamble. United States v. Synodinos, 218 F.Supp. 479, 481 (D. Utah 1963).

211 H.R. REP. NO. 967, *supra* note 114, at 2633.

212 *Id.* at 2634.

213 *Id.* at 2361.

214 18 U.S.C. § 1955 (1995).

215 *Id.*

216 *Id.*

Gambling Business Act, however, section 1084 contains no restrictions to “the territorial limitations”²¹⁷ of the United States. [46]

United States v. Baker suggests drawing inferences from “Congress’ [sic] other legislative efforts to eliminate the type of the crime”²¹⁸ for how to interpret a statute that is silent. In analyzing the ITWPA’s silence on extraterritoriality, one can draw analogies to the extraterritorial application of the Travel Act.²¹⁹ The *Noriega* court held that the Travel Act applies extraterritorially because the Supreme Court interpreted it as a broad denial of criminal “access to the channels of commerce.”²²⁰ Similarly, the ITWPA employs broad language for denying illegal gambling operations access to the channels of commerce, implying that Congress intended the ITWPA to be “uniquely broad and transitory in scope.”²²¹ Congress wrote the Travel Act broadly to prohibit the use of the channels of interstate and foreign commerce for the furtherance of criminal activity.²²² Similarly, Congress wrote the ITWPA specifically to block transport of illegal gambling devices in interstate and foreign commerce. Although the acts play “different roles,” they share common language and common goals, and should share a common extraterritorial application.²²³ [47]

In 1961, Congress enacted several pieces of legislation, including section 1084, the Travel Act, and the ITWPA, in response to the activity of organized crime.²²⁴

217 *Bowman*, 260 U.S. at 94.

218 *Baker*, 609 F.2d at 136.

219 18 U.S.C. § 1952. The Act provides that
 (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. . . .
 (b) As used in this section “unlawful activity” means (1) any business enterprise involving gambling.

See *Noriega*, 746 F.Supp. at 1518.

220 *Noriega*, 746 F. Supp at 1518 (quoting *Erlenbaugh*, 409 U.S. at 246).

221 *Id.*

222 *Erlenbaugh*, 409 U.S. at 246.

223 *Id.* at 245.

224 S. REP. NO. 644, 87th Cong., 1st Sess. 4 (1961).

Broad statutory language such as that of section 1084 and the ITWPA implies that Congress designed the statutes to reach “beyond state and national borders.”²²⁵ Specifically, both statutes serve to prohibit the spread of illegal gambling by limiting criminal access to interstate and foreign commerce through wire, mail, or transportation. Congress intentionally drafted the laws barring illegal gambling information, bets, and paraphernalia from interstate and foreign commerce to allow law enforcement to respond to illegal gambling’s “great ingenuity in avoiding the law.”²²⁶ To limit the “locus to the strictly territorial jurisdiction”²²⁷ of wire transmission or transportation would “greatly curtail the scope and usefulness of the statute[s].”²²⁸ Federal anti-gambling laws, therefore, should reach off-shore Internet casinos that knowingly conduct illegal gambling activity with individuals residing in the United States. [48]

B. *Extending the Jurisdiction of Federal Anti-Gambling Laws*

Before a court can extend extraterritorial jurisdiction over off-shore cybercasinos, it must assess the “reasonableness” of such an application.²²⁹ As with Noriega’s conduct while in Panama, when off-shore Internet casinos accept wagers from United States residents, this activity creates a direct effect within the United States. It diverts funds from state licensed gambling revenues, encourages residents to break state gambling laws, and undermines the federal government’s attempt to limit the access of illegal gambling to interstate and foreign commerce. In exploring the reasonableness of applying federal law against an off-shore Internet casino, *United States v. Moncini* provides a proper touchstone.²³⁰ [49]

Moncini affirmed the conviction of a defendant charged with mailing child pornography, even though the defendant was Italian and mailed the pornography from Italy to California.²³¹ At the time of his conviction, mailing child pornography was legal in Italy.²³² The court rejected Moncini’s argument that once

225 *Noriega*, 746 F. Supp. at 1518.

226 S. REP. NO. 589, 87th Cong., 1st Sess. 3 (1961).

227 *Bowman*, 260 U.S. at 98.

228 *Id.*

229 *Noriega*, 746 F. Supp. at 1515.

230 *Moncini*, 882 F.2d at 401.

231 *Id.* at 402.

232 *Id.* at 403.

he placed the pornography in the Italian mail the “crime was complete.”²³³ Under the federal venue statute,²³⁴ “any offense,” such as mailing child pornography, “involving the use of the mails . . . is a continuing offense.”²³⁵ Because mailing child pornography constitutes a continuing offense, when the child pornography travels through the United States mail, part of the offense occurs in the United States.²³⁶ Since *Moncini*’s mailing resulted in an act “within the territory of the United States . . . territorial jurisdiction was proper.”²³⁷ [50]

Like in *Moncini*, if an Internet casino mails or sends software or gambling information “designed for use” in illegal gambling through the Internet²³⁸ to the United States, that use of interstate wire facilities should be a continuing crime. Under the *Moncini* analysis, then, by transmitting wagering information from one jurisdiction to another jurisdiction, the violation occurs in both jurisdictions. Therefore, if an off-shore Internet casino transmits wagering information into the United States, the off-shore Internet casino should come under the jurisdiction of the United States by the very nature of the continuing offense. [51]

C. Law Enforcement’s Mission Impossible

In theory, law enforcement has the power to arrest off-shore Internet casino operators for violating federal anti-gambling laws. In reality, curtailing the activity becomes a Herculean task. Just because a court can establish extraterritorial jurisdiction over an off-shore Internet casino does not mean that the government can necessarily reach the individual. In *Moncini*, officers arrested the defendant while he visited the United States.²³⁹ In *Noriega*, the United States invaded Panama to seize the defendant.²⁴⁰ Questions remain as to whether foreign countries will willingly extradite profitable casino operators, or whether the United

233 *Id.*

234 18 U.S.C. § 3237 (1994).

235 *Moncini*, 882 F.2d at 403 (citing 18 U.S.C. § 3237(a) (Supp. V 1987)).

236 *Id.* at 403.

237 *Id.* at 404.

238 The use of the telephone qualifies as “transportation in interstate commerce” under 18 U.S.C. § 3237(a). *United States v. Whitaker*, 372 F. Supp. 154, 158 (M.D. Pa. 1974), *aff’d without op.* 503 F.2d 1399, 503 F.2d 1400 (3d Cir. 1974), *cert. denied* 419 U.S. 1113 (1975).

239 *Moncini*, 882 F.2d at 403.

240 *Noriega*, 746 F. Supp at 1511.

States will invade foreign countries to seize them. The United States could arrange extradition if it had significant relations with a nation harboring an Internet casino operator who knowingly accepts bets from the United States. As the Internet casino requires only a Web site, however, the physical location of the computer becomes less significant. Unlike traditional illegal gambling operations, which require a secure and readily accessible location for customers, Internet casino operations can move from country to country while maintaining the same Web site.²⁴¹ If Belize becomes inhospitable for the Internet casino operator, there are probably other countries willing to share in the casino's profits. Short of a United States raid on an off-shore Internet operation, or the operator visiting the United States, the federal government has very few options for shutting down Internet casinos that knowingly accept bets from the United States. [52]

Furthermore, not all Internet operators purposefully avoid United States law by operating in shadowy tax-havens in the Caribbean. Currently, Liechtenstein offers an international lottery where individuals can purchase tickets with Visa or Mastercard over the Internet.²⁴² United States citizens can also access Australia's Aussie Lotto through the Internet.²⁴³ The Canadian government currently is considering the introduction of Internet gambling.²⁴⁴ Canadian officials, working with GameWay Technologies of the United States, may develop an Internet version of the Canadian national lottery.²⁴⁵ [53]

With high speed telephone lines, encryption, and the increasing volume of Internet gamblers, state law enforcement faces the impossible task of tracking down the casual, at-home Internet gambler who violates state gambling laws. The state and federal governments can target the Internet providers that allow customers to access the cybercasinos, but this, too, causes problems. First, residents in the United States can easily subscribe to an Internet provider located outside of the United States.²⁴⁶ Second, given the number of new Web sites and a cybercasino's ability to change the name of its Web site, access providers will have difficulty keeping track

241 For instance, Cyberstate lottery, located on the Web at <http://www.pix.za/lottery/play.html>, which offers lottery tickets over the Internet, has recently moved from the West Indies to South Africa. LOTTERY LINKS, located on the Web at <http://www.connect.org.uk/lottery/Links/Reviews/Rev131.html>.

242 Located on the Web at <http://www.interlotto.li/>.

243 Located on the Web at http://www.winnersweb.com.au/play_lotto.html.

244 Impoco, *supra* note 49, at 60.

245 *Id.*

246 See Hiawatha Bray, *Porn Curb Escapable*, BOSTON GLOBE, Dec. 29, 1995, at 29 (discussing Internet users who can elude Internet censorship).

of which sites to block.²⁴⁷ The United States could follow China's lead, and develop a system that would require users to petition the government to gain access to restricted Web sites.²⁴⁸ Concerns about the First Amendment and censorship, and the large bureaucracy such an operation would entail, make this alternative unrealistic. [54]

Through the Racketeer-Influenced and Corrupt Organizations Act (“RICO”),²⁴⁹ law enforcement can reach some of the off-shore Internet casinos. Under RICO, the federal government could seize any assets from the Internet casino’s illegal activity.²⁵⁰ Authorities, however, might have difficulty seizing assets outside the United States. Sports International trades publicly on the NASDAQ market.²⁵¹ If the United States government could show that Sports International moved illegal gambling winnings through stocks and dividends into the United States, the government could seize these assets under RICO.²⁵² Ultimately, however, if the operator of the Internet casino never physically enters the United States, the theory of extraterritorial applicability of federal anti-gambling law remains purely a theory. [55]

IV. CONCLUSION

The cybercasino phenomenon combines two rapidly changing areas of American culture and law: gambling and the Internet. The regulation of cybercasinos creates numerous practical and theoretical problems, including jurisdiction and enforcement. What if the Internet gambler wins a large payoff and suddenly the Internet casino disappears? If law enforcement cannot reach the Internet casino operator, how can law enforcement protect consumers from fraud? *Web Review* suggests that a real connection exists between fraud and Internet

²⁴⁷ Lewis, *supra* note 191, at D4. When asked about Microsoft’s ability to limit access to certain Web sites, George Meng, a manager at Microsoft Network, responded: “If we don’t maintain the server, my guess is that we could not control the content.” *Id.*

²⁴⁸ Kahn, *supra* note 191, at A4.

²⁴⁹ 18 U.S.C. §§ 1961-1968 (1994).

²⁵⁰ 18 U.S.C. § 1963.

²⁵¹ Located on the Web at <http://www.intersphere.com:80/bet/>. Sports International (USA) trades under the symbol “sbet.”

²⁵² 18 U.S.C. § 1963; Coleman, *supra* note 59, at 58A.

gambling.²⁵³ Lou Mayo, Sports International investor and consultant, ²⁵⁴ claims that Sports International operates “completely above the board,”²⁵⁵ yet he himself has been convicted of a \$5.4-million stock fraud.²⁵⁶ Recently the Federal Bureau of Investigations began checking Mayo's alleged involvement in a \$3.4-million penny-stock fraud.²⁵⁷ In 1985, a court convicted Kerry Rogers of WagerNet, along with a member of the Gambino Mafia family, of a \$22-million bank fraud.²⁵⁸ Kerry Rogers claims that this conviction makes him more qualified to run a reputable Internet gambling operation.²⁵⁹ Stephen Pizzo suggests that “Internet gambling [is] the best thing that happened to [organized crime] since Castro tossed the mob out of their unregulated Havana casinos forty years ago.”²⁶⁰ [56]

Minnesota's Attorney General warns that “electronic payment systems” will make “identifying and locating Internet crooks” virtually impossible.²⁶¹ The apparent impossibility of preventing illegal gambling on the Internet may expose an inherent problem in conducting, protecting, and enforcing *any* transaction over the Internet. With experts projecting that over one billion people will be using the Internet by 2003,²⁶² the possibility exists that the Internet will become a dangerous, digital frontier and unsecure marketplace for the twenty-first century, with national

²⁵³ Stephen Pizzo, *Virtual Casinos Or Virtual Trouble?*, WEB REV., Oct. 27, 1995, available on the Web at <http://www.gnn.com/gnn/wr/oct27/news/natl/index.html>.

²⁵⁴ Stephen Pizzo, *Sports International 'Consultant' Convicted of Stock Fraud*, WEB REV., Oct. 27, 1995, available on the Web at <http://www-e1c.gnn.com/gnn/wr/oct27/news/natl/sports.html>.

²⁵⁵ *Bontempo*, *supra* note 59, at 1.

²⁵⁶ *United States v. Mayo*, 646 F.2d 369 (9th Cir. 1981).

²⁵⁷ Pizzo, *supra* note 254.

²⁵⁸ *Id.*; see also Jonathan Kwitny, *Easy Money: How A Hoodlum Got A \$22 Million Bank Loan Without Much Effort*, WALL ST. J., Jan. 14, 1986 (discussing Kerry Rogers's involvement in the bank scam).

²⁵⁹ *CBS Evening News*, *supra* note 71. Under state gambling regulations, this conviction would prohibit an individual from operating a casino in the United States. Pizzo, *supra* note 254.

²⁶⁰ *Crime Ties Uncovered At Two Internet Casino Sites*, Select Fed. Filing News Wires, Oct. 27, 1995, available in WESTLAW, ALLNEWSPLUS database.

²⁶¹ *Hearing Regarding Consumer Protection and the Internet Before Federal Trade Commission*, at 9 (Nov. 20, 1995) (testimony of Hubert Humphrey III, Minnesota Attorney General) (on file with the author).

²⁶² *Id.* at 1.

borders, jurisdictions, and law enforcement serving as “barely noticeable speed bumps on the Information Superhighway.”²⁶³ [57]

The question of Internet regulation lies at the core of Internet gambling. On December 29, 1995, Senator Jon Kyl (R-AZ) introduced the Crime Prevention Act of 1995.²⁶⁴ The proposed Act amends section 1084(a) to make it apply explicitly to individuals who place interstate bets using “electronic communication.”²⁶⁵ Notwithstanding this recent proposal, existing law may already adequately address telecommunications and gambling, including the Internet. Moreover, at the international level, nations theoretically could agree not to allow Internet gambling operations in their countries. So long as one nation allows an Internet casino to operate from its territory, however, the problem remains unsolved. [58]

As states rush to lower taxes and increase revenues through legalized gambling, the rationale for federal prohibition of interstate gambling begins to unravel. Federal laws deny organized crime access to interstate commerce, but they also deny legitimate gambling operations the benefits of interstate commerce. Soon enough, states may wish to allow residents to purchase lottery tickets or conduct off-track betting over the Internet. How will a state differentiate between a resident of its own state and a resident from another state? Hypothetically, if Massachusetts offers its state lottery to Massachusetts residents and individuals living outside of the United States, can Massachusetts prevent a California resident from purchasing a lottery ticket? How will California respond? Will California resort to defending its investments in state-licensed gambling by entering the Internet? [59]

If technology outpaces law enforcement, the only weapon may lie in competition. Is this nation willing to accept such a wholesale adoption of gambling, potentially delivering it twenty-four hours a day to any home with a phone jack, computer, and modem? America may have no choice. Otherwise, on the new digital frontier there appears to be no place for the sheriff. [60]

²⁶³ *Id.* at 7.

²⁶⁴ S. 1495, 104th Cong., 1st Sess. § 1501 (1995).

²⁶⁵ *Id.* In addition, the Act would require the United States Attorney General to deliver a report to Congress addressing Internet gambling. *Id.* § 1503.