



# E<sup>NEWS</sup>COMMERCE

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## SPOTLIGHT ON ONLINE GAMBLING

Internet gambling is legal in many countries other than the U.S., may become legal in some states (as it has in Nevada), and may become legal in some states for certain kinds of gambling (like charitable lotteries). U.S. federal and state authorities are taking a variety of approaches toward online gambling. Here is a brief summary of the state of play.

**Existing Federal Law.** The Interstate Wireline Act (or Wire Act), which prohibits the use of a *wire communication facility* for transmitting bets or wagers on any “*sporting event or contest*” or information assisting in the placement of such bets, has been used to prosecute Internet sports gambling. See *People v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999); *United States v. Cohen*, No. 98 CR 434 (S.D.N.Y. 1999). Although some experts believe that the Wire Act could be read to ban Internet gambling in the United States, most online gambling occurs offshore. And a federal district court recently declared that the Wire Act applies only to “sporting events” (and not to casino-style games). See *MasterCard Int’l, Inc., Internet Gambling Litig.*, 132 F. Supp.2d 468 (E.D. La. 2001) (now on appeal).

Given the ambiguity of the Wire Act (and the likely ineffectiveness of state legislation in this area), the National Association of Attorneys General has called for revision of the Wire Act’s language to prohibit Internet gambling.

**Past Federal Legislative Efforts.** Legislation aimed at unambiguously making online gambling unlawful in the U.S. has been put forward several times over the past

few years. The Internet Gambling Prohibition Act of 1997, S. 474, 105th Cong. (the “Kyl Bill”), reported by the Senate Judiciary Committee in October 1997, would have made it unlawful for any person engaged in a gambling business knowingly to use the Internet or any other interactive computer service to (1) place, receive, or otherwise make a bet or wager; or (2) send, receive, or invite information assisting in the placing of a bet or wager. The Kyl Bill failed during the 105th Congress, was reintroduced in the 106th, and failed again. Even one of the bill’s sponsors, Rep. Robert Goodlatte (R-Va), said that enforcement of such legislation would be “a challenge” — given that nearly all Internet gambling operators are based offshore, out of the reach of authorities in the United States.

**Pending Federal Legislation.** The House Financial Services Committee (and its Oversight and Investigations Subcommittee) held hearings on July 12 and July 24 to discuss the status of legislative proposals to ban or limit online gambling. The Committee is considering making it unlawful to accept bank instruments (including credit cards) in connection with online betting.

At the July 12 hearing, a Visa representative noted that the Visa system is running 35.5 billion transactions per year, that the system necessarily relies on merchant-supplied coding to determine whether a particular business is a gambling business, that it would be very difficult to tell whether a particular transaction was an “illegal” online gambling transaction (given the intractable jurisdictional questions posed by online gambling), and that “[m]aking payment systems responsible for policing Internet gambling simply is not a quick fix toward solving a complex social problem.”

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Nonetheless, the Committee is moving forward to consider legislation that would ban financial transfers to “unlawful” online gaming sites and would limit in-home gambling technologies. The bill, H.R.556, the Unlawful Internet Gambling Funding Prohibition Act, was introduced earlier this term by Rep. James Leach (R-Iowa). This legislation generally prohibits anyone engaged in a gambling business from receiving Internet gambling proceeds (e.g., through credit card transactions or electronic funds transfers) whenever the bet or wager would be illegal in the state in which it was initiated, received, or otherwise made.

Another bill, H.R.2579, the Internet Gambling Payments Prohibition Act (introduced by Rep. John Falce (D-NY) earlier this month), would prohibit the knowing acceptance of credit cards, electronic fund transfers, checks, and other forms of payment “in connection with the participation of another person in Internet gambling” by a person engaged in a gambling business — in other words, prohibiting all Internet gambling per se. Financial institutions, credit card issuers, and other money transmitters would be able to avoid liability by showing that they did not “knowingly participate” in Internet gambling. Five-year prison terms are called for by the draft legislation.

Lawsuits Against Credit Card Companies. Civil suits have been brought against credit card companies for facilitating online gambling activities. *See, e.g., Mastercard Int’l, Inc., Internet Gambling Litig.*, 132 F. Supp. 2d 468 (E.D. La. 2001); *Jubelirer v. MasterCard Int’l, Inc.*, 68 F. Supp. 2d 1049 (W.D. Wis. 1999). In these cases, plaintiffs have relied on a theory of civil RICO conspiracy. Although at least one court has acknowledged the possibility that such a theory might apply to third parties such as the credit card company that facilitates or performs services for an Internet gambling site, *see*

*Mastercard Int’l*, 132 F. Supp.2d at 470, none of these suits has succeeded in having a credit card company held liable for its customer’s use of the card in illegal online gambling.

Pending California Legislation. The California legislature is considering a bill (A.B.1229) that would prohibit Internet gambling. The bill provides that its intent is to remove any ambiguity as to the illegality of online gambling in California, and to “serve notice to financial institutions and other intermediaries doing business in California that gambling debts from illegal online gambling may be unenforceable.” Horse wagering and bingo games (for charitable purposes) are permitted, as are nonprofit raffles.” Moreover, federally recognized Indian tribes will be permitted to operate casinos on Indian lands.

New Nevada Law. Meanwhile, Nevada has *legalized* Internet gambling. A new act, A.B.466, adopted in June, directs the state gaming commission to adopt regulations governing “interactive gaming,” defining “interactive gaming” as “the conduct of gambling games through the use of communications technology” (including the Internet). Section 4 of A.B.466 provides that debts incurred by gamblers interacting with a licensed establishment are valid and enforceable. The commission will charge \$500,000 for an initial two-year license.

New Jersey Prosecution. In June, New Jersey officials charged three offshore companies with violating the state’s gambling and consumer protection laws by advertising and operating Web sites that allow illegal gambling by New Jersey residents. The three firms advertised their activity on billboards in New Jersey, which presumably gave the prosecutors sufficient jurisdictional clout to attack them. During its investigation, New Jersey officials contacted companies providing billboard advertising to the defendants and the billboards were removed.

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