

**CRIMINALIZING INTERNET GAMBLING: SHOULD THE FEDERAL
GOVERNMENT KEEP BLUFFING OR FOLD?**

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I. Introduction

Worldwide, millions of people gamble on Internet gambling sites, generating billions of dollars of online revenue. Many of these online gambling operations presently accept bets from United States citizens in violation of U.S. Federal laws. However, most of these Internet gambling operations are based in foreign jurisdictions where Internet gambling is legal. Consequently, it is rare for the U.S. Government to prosecute these crimes. In addition, other changes to the gambling landscape in the U.S. and the world, such as the rise in state sponsored lotteries, the growth of gambling operations on Native American reservations, and the increase in mainstream foreign investment in online gambling, begs the question: Should the Federal Government continue to bluff on the issue of outlawed Internet gambling, or is it time to fold and encourage the creation of state and federal mechanisms for regulating this industry in a constructive manner?

This paper first describes the various aspects of Internet gambling, and then reviews the U.S. criminal laws that apply to gambling conducted online. As part of this review, several criminal and civil cases involving Internet gambling activities are discussed. Lastly, how the rapidly changing gambling landscape in the United States and the world may effect future federal lawmaking efforts for controlling Internet gambling is considered.

II The Evolution of Internet Gambling

In 1999, there were 700 Internet gambling sites.¹ However, by 2004 more than 1,800 offshore gambling Internet sites received about seven billion dollars in bets, with the online gambling industry projected to be an 18.4 billion dollar per year industry by 2010.² Internet gambling sites offer a variety of gambling venues, such as casino-style gambling, off-shore sports book operations for betting on sporting events and horse races, etc., and, recently, the increasingly popular interactive Internet party poker game. A brief

explanation of how these various Internet gambling sites operate follows.

An Internet gambling casino is designed to mimic a real casino, and typically invites the gambler to download gambling software, open an account, wire money to the account to purchase virtual "chips," before the gambler may proceed to play various online games of chance such as slots, blackjack or roulette.³ The outcomes of play are determined by a random number generator.⁴ Winnings are credited, and losses are debited, to the user's account.

Another Internet gambling business model is patterned off of book making on sporting events, and the like, wherein the gambler opens an account and, thereafter, can place bets on various sporting events and the like.⁵ Internet bookmaking activities may additionally charge a commission, called a "vig," on each bet. The vig can be as high a 10% of the total bet. Winnings are credited to, and losses and fees are debited against, the gambler's account in a similar manner as for the online casinos.

A recent addition to Internet gambling is the formation of online poker sites where players log on to play other players.⁶ Under this business model, the website operator does not directly participate in the gambling; instead, the web operator manages the poker pot while the players gamble between themselves. The website's random number generator determines what cards the players get and the web operator takes a cut, called a "rake," of each pot, which is the total amount of money bet in a single game. Typically, the rake is 2 to 5 % of the pot. Under this model, the operator of the online poker site does not gamble against the poker players. Only the poker players are gambling, and they gamble against one another.

III. Federal Laws Applicable to Internet Gambling

There are many Federal Laws applicable to internet gambling activities, including (i) 18 U.S.C. § 1084, known as the "Wire Act," which criminalizes the use of interstate

telephone facilities by those in a gambling enterprise to transmit gambling-related information, (ii) 18 U.S.C. § 1952, known as the “Travel Act,” which criminalizes the use of any interstate facility with intent to promote an unlawful activity such as illegal gambling, (iii) 18 U.S.C. § 1955, known as the “Illegal Gambling Business Act,” which prohibits illegal gambling businesses involving five or more persons, (iv) 18 U.S.C. §§ 1956 and 1957, which criminalizes money laundering, and (v) 18 U.S.C. §§ 1961 and 1962, which outlaw racketeer influenced and corrupt organizations.⁷ While there are other Federal gambling statutes that conceivably may apply to Internet gambling activities, the present paper is limited to discussing the seven statutes listed above.⁸

III.A. The Wire Act

The Wire Act (18 U.S.C. § 1084) pertains to (1) persons engaged in the business of betting or wagering, who (2) knowingly use a wire communication facility (i) for the transmission of bets or wagers, or information assisting the placement of bets or wagers, in interstate commerce or foreign commerce on any sporting event or contest, or (ii) for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or (iii) for information assisting in the placing of bets or wagers.⁹ However, the Wire Act includes a “safe harbor” provision exempting from criminal liability 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 which 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.¹⁰

In other words, the Wire Act prohibits the use, by persons engaged in the business of betting or wagering, from using interstate telephone facilities to transmit gambling related information. More specifically, the Wire Act prohibits the transmission of any

gambling related information and it prohibits the transmission of sports bets. Because the Wire Act is addressed to persons “engaged in the business of betting or wagering,” it applies to those persons operating a betting or wagering business, but not to the customers (i.e., the bettors) who use the services of the business. In order to apply the Wire Act to Internet gambling, the government needs to prove: (1) the website is engaged in the business of betting, (2) the website owner knows that the bets are being transmitted through a wire communication facility, (3) the bets are being transmitted in interstate or foreign commerce, and (4) the Internet gambling business or the players are able to receive money or credit as a result of the bets.¹¹ However, the scope of the Wire Act may be limited to gambling on sporting events or contests, and may not apply to other forms of Internet gambling such as the virtual casinos and the online poker sites.¹²

While the Wire Act has not been invoked extensively in combating illegal gambling, it has been applied to at least one published appellate case of Internet gambling in U.S. v. Cohen.¹³ In Cohen, defendant Jay Cohen had moved to Antigua in 1996 and established himself as President of World Sports Exchange (WSE), a bookmaking business patterned after New York’s Off-Track Betting. WSE’s business involved bookmaking on American sports events and was not limited to gambling on horse races.

WSE operated an “account-wagering system,” wherein new customers would open an account with WSE and wire at least \$300 into WSE’s Antiguan bank account. A gambler seeking to place a bet would then contact WSE via either telephone or internet to bet. WSE would then issue an immediate, automatic acceptance and confirmation of the bet and would subtract losing bets from the gambler’s account, and credit winnings to this account. WSE also made money by retaining a “vig” or commission of 10% of each bet.

WSE advertised its bookmaking operation in the United States by radio, newspaper and television. WSE’s customers were primarily gamblers located in the United States. WSE was successful, and in one fifteen-month period WSE collected

about \$5.3 million dollars in funds from U.S. gamblers.

The FBI investigated WSE's bookmaking operation. FBI agents called WSE from New York, where sports betting is illegal, and opened accounts and placed sports bets with WSE in Antigua, where sports betting is legal. In 1998, Cohen was arrested and, after a 10-day jury trial, was convicted of five counts of violations of 18 U.S.C. § 1084(a). Cohen appealed the Wire Act convictions alleging that (i) the safe harbor provision of 18 U.S.C. § 1084(b) should have been applied, and (ii) the government had not shown that Cohen had "knowingly" violated the statute.¹⁴ Cohen's appeal also requested the 2nd Circuit invoke the rule of lenity and reverse the conviction on the grounds the statute was too unclear to provide adequate warning of what conduct is prohibited.¹⁵

The 2nd Circuit ruled that the safe harbor provision of 18 U.S.C. § 1084(b) pertains to transmissions wherein (1) betting is legal in both the place of origin and the destination of the transmission, and (2) the transmission is limited to mere information that assists in the placing of bets as opposed to including the bets themselves.¹⁶ Cohen argued that betting was legal in both Antigua and in New York, and he argued that the transmissions by the customers merely assisted in the placing of bets, which was effected in Antigua by WSE. The 2nd Circuit rejected both of these arguments.

First, the 2nd Circuit opined there was no doubt betting was illegal in New York, which expressly prohibited betting in its Constitution, N.Y. Const. art. I, § 9, and in its General Obligations Law, N.Y. Gen. Oblig. L. § 5-401. Therefore, the 2nd Circuit concluded the safe harbor provision, 18 U.S.C. § 1084(b), did not apply to Cohen's case as a matter of law. Second, the 2nd Circuit rejected Cohen's argument that WSE's account wagering system used transmissions between gamblers and WSE containing only information enabling WSE to place bets in Antigua on behalf of its customers. The 2nd Circuit noted that WSE could only place bets its customers requested and authorized to be

booked. Therefore, the 2nd Circuit concluded that, by making betting requests and having these requests accepted, WSE's customers were placing bets, which is conduct falling squarely in violation of Section 1084(a) and outside of the scope of the safe harbor provision of Section 1084(b).

The 2nd Circuit also rejected Cohen's argument that he lacked the requisite mens rea to sustain a conviction. The 2nd Circuit ruled it was only necessary for the government to establish Cohen knowingly committed the deeds violating Section 1084(a), not that Cohen intended to violate the statute.¹⁷ Therefore, the Court concluded Cohen's admission he knowingly transmitted information assisting in the placement of bets was sufficient to satisfy the mens rea requirement of the statute.

Regarding whether lenity should be granted by the Court, Cohen argued the statute did not provide fair warning of (1) whether the phrase "bet or wager" included WSE's "account wagering," (2) whether "transmission" included receiving information as well as sending information, and (3) whether betting must be legal or merely non-criminal in a particular jurisdiction in order to be considered "legal" in that jurisdiction.¹⁸ The 2nd Circuit rejected all of Cohen's arguments for lenity.

Specifically, the 2nd Circuit explained the rule of lenity applies where there exists a "grievous ambiguity" in a statute such that a court would have to "guess" as to what Congress intended. In this case, the 2nd Circuit ruled Section 1084(a) was clear so lenity would not be applied. With respect to "bets or wagers," the 2nd Circuit held it was clear WSE's account-wagering was wagering because a gambler would request a bet by telephone or via the internet and WSE would accept the bet. The 2nd Circuit explained that WSE's requirement for gamblers to maintain a fully-funded account as a condition to place bets did not obscure the issue.

Regarding the term "transmission," the 2nd Circuit noted Cohen had used two wire facilities, the telephone and the internet, and had marketed these facilities to the

public for the express purpose of transmitting bets and betting information. The Court noted Cohen had received transmissions from customers placing bets, and in response, sent acceptance and confirmation transmissions back to these customers. On these facts, the 2nd Circuit concluded it was clear a “transmission” in accordance with Section 1084(a) had occurred whether the signal was the betting information provided by the gambler or the confirmation signal provided by WSE.

Lastly, with respect to Cohen’s third argument, the 2nd Circuit ruled it was plain to all an act must be permitted by law to be legal. The 2nd Circuit reiterated that the safe harbor provision of Section 1084(b) was clear and did not apply to the facts of Cohen’s case.

III.B. The Travel Act

Under the Travel Act (18 U.S.C. § 1952), it is unlawful for a person to (1) use any facility in interstate commerce, (2) with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity (i.e., a business enterprise involving illegal gambling), and (3) thereafter perform or attempt to perform any of the following acts: (i) distribution of the proceeds of the unlawful activity, (ii) commit any crime of violence to further the unlawful activity, or (iii) otherwise act to promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on of the unlawful activity.¹⁹ Under 18 U.S.C. § 1952(b) of the Travel Act, any business enterprise involving gambling in violation of the laws of the State in which the acts are committed, or in violation of the laws of the United States, is an “unlawful activity.”²⁰

In other words, it is a Federal crime to use a facility of interstate commerce to promote, manage, establish, carry on or facilitate any unlawful business enterprise involving gambling, wherein the gambling enterprise violates either state or federal law.

It is important to realize the Travel Act criminalizes the use of interstate or foreign facilities in furtherance of unlawful gambling, and not the violation of state law.²¹ Consequently, it is not necessary for the government to prove a state crime was ever completed.²² Furthermore, the Travel Act does not define the term “gambling” per se, so it is likely Travel Act violations encompass any form of Internet gambling prohibited either by the State or Federal law so long as a facility of interstate or foreign commerce is employed.²³

At least one State Court has concluded that gambling via the Internet from New York to an offshore site in Antigua violates New York Penal Law and would also violate the Travel Act.²⁴ In World Interactive Gaming Corp., the Attorney General of the State of New York sought to enjoin World Interactive Gaming Corporation (WIGC) from operating within New York, or offering to residents of New York, gambling over the internet. At issue was whether the State of New York could enjoin a foreign corporation, which was legally licensed to operate a casino offshore, from offering Internet gambling to individuals located in New York.

The State Court ruled that New York State could enjoin WIGC from offering Internet gambling services to persons located in New York because (1) Article 1 of the New York State Constitution expressly prohibited any kind of gambling not authorized by the state legislature, and (2) Internet gambling would violate New York Penal Law and Section 1952(a) of the Travel Act.²⁵

In World Interactive Gaming Corp., WIGC was a Delaware corporation that maintained corporate offices in New York and wholly owned Golden Chips Casino, Inc. (GCC), which was an Antiguan subsidiary corporation licensed to operate a land-based casino in Antigua. GCC developed the interactive software, and assembled and installed the necessary servers in Antigua, to allow individuals from around the world to gamble from their home computers using GCC’s web-based casino. GCC promoted its online

casino by advertising on the GCC's website, by advertising elsewhere on the Internet, and by publishing advertisements in a U.S. national gambling magazine. GCC's promotions were targeted nationally in the U.S. and were viewed by New York residents.

In 1998, the Attorney General of New York began investigating WIGC when the company began soliciting investors in Texas and elsewhere for a private securities offering in violation of certain New York laws. The Attorney General discovered WIGC represented to potential investors that profit margins of web-based casinos were conservatively 80-85%. As part of its investigation, the Attorney General's office logged onto the GCC website, downloaded gambling software, and began placing bets. In opening an account with GCC, a user had to enter his permanent address.

Users submitting an address in a state that permitted land-based gambling, such as Nevada, were able to access the GCC casino, whereas users submitting an address in a state that did not permit land-based gambling, such as New York, were denied access to the GCC casino. The Attorney General soon learned, however, the GCC software did not verify a user's address, so an individual located in New York would be granted access to the GCC casino if he merely changed the state of residence entered into the GCC database from New York to Nevada. Once granted access to GCC's internet casino, an individual located in New York could play virtual slots, blackjack or roulette.

Subsequently, the Attorney General filed suit seeking to enjoin WIGC and its subsidiary GCC from running any aspect of their Internet gambling business within New York State. WIGC moved to dismiss the suit on the grounds of lack of subject matter jurisdiction of New York to prosecute alleged violations of the Wire Act (18 U.S.C. § 1084(a)), the Travel Act (18 U.S.C. § 1952), and the Paraphernalia Act (18 U.S.C. § 1953).

In short, WIGC argued New York lacked subject matter jurisdiction over the Internet gambling activity because the gambling occurred outside of New York state. The

Court rejected this argument on the grounds that, under New York Penal Law § 225.00(2), when a person engaged in gambling is located in New York, then New York is construed as the location where the gambling occurred.²⁶ The Court considered it irrelevant the monies used to gamble were located in Antiguan accounts and gambling is legal in Antigua because the act of entering a bet, and transmitting it, from New York via the Internet adequately constituted gambling activity within New York.²⁷

The New York Court also opined that the Wire Act, the Travel Act, and the Paraphernalia Act all applied to WIGC's internet gambling activities.²⁸ The Court explained the Wire Act applied to businesses involved in betting or wagering, and the Travel Act applied to the use of a facility in interstate or foreign commerce with intent to distribute proceeds of any unlawful activity or to otherwise promote, manage, establish, carry on, or facilitate any unlawful activity under 18 U.S.C. § 1952. In particular, the New York Court noted that the Internet is accessed by telephone wire in the same manner as a prohibited telephone call from an illegal gambling facility. The Court reasoned that when a person in New York uses a telephone wire to connect to the GCC server for the purpose of logging onto the illegal gambling website, followed by gambling activity using the website, followed by transmission by the GCC server of betting information back to the user in New York, there has been a violation of both the Wire Act and the Travel Act.²⁹ The New York Court also concluded by hosting a virtual casino, which is created for a time in the gambler's computer in New York, and by exchanging betting information with this computer user, GCC has conducted an illegal gambling communication in violation of the Wire Act and the Travel Act.³⁰ Inherent to the Court's conclusion is the notion that access to the Internet necessarily involves use of a wire communication facility (i.e., telephone wires), which is an element of a Wire Act violation, and that the Internet is a facility used in interstate or foreign commerce, which is an element of a Travel Act violation.

III.C. The Illegal Gambling Business Act

The Illegal Gambling Business Act (18 U.S.C. § 1955) pertains to (1) those who conduct, finance, manage, supervise, direct, or own all or part of an illegal gambling business, wherein (2) an “illegal gambling business” means a gambling business (i) in violation of the law of the State or political subdivision in which it is conducted, and (ii) involving five or more persons who conduct, manage, supervise, direct, or own all or part of the business, and (iii) that has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2000.00 in any single day.³¹ Gambling is defined under the statute as including, but is not limited to, pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.³²

Congress passed the Illegal Gambling Business Act as part of the Organized Crime Control Act of 1970 in an effort to combat large scale illegal activities.³³ The Illegal Gambling Business Act does not apply to individual players, and is unlikely to apply to Internet service providers, because they are not gambling businesses in accordance with the statute. The statute does not require those operating an illegal gambling business actually be convicted in a state court, but only (i) there be some state law violated by the business, (ii) the gambling business involved five or more persons, and (iii) the business remained in substantially continuous operation for more than thirty days or grossed more than \$2000.00 in any single day.³⁴ Furthermore, to be construed as a person involved in the business, it is only necessary for the individual to be considered necessary and helpful.³⁵ Thus, computer operators, computer maintenance crews, accountants, telephone operators, on-line help desk operators, and owners may be included as persons involved in the business even though not all of these individuals

participate in the actual gambling.³⁶ One interesting feature regarding the Illegal Gambling Business Act is that it may be applied to strictly intrastate illegal gambling businesses.³⁷

Based on what is known about online gambling websites, it is likely these activities involve a violation of state gambling laws (e.g., General Obligations Law, N.Y. Gen. Oblig. L. § 5-401; New York Penal Law § 225.00(2)), involve five or more people, and have been in substantially continuous operation for 30 days or more or have grossed over \$2000.00 in revenue in any single day. Specifically, Section 1955(b) of the Illegal Gambling Business Act explicitly defines bookmaking activities as “gambling,” so online sports betting sites clearly fall within the scope of this Act.

Less clear is whether online casinos, which rely upon random number generators to play virtual slots, roulette, dice and other traditional casino games, would fall within the scope of the Illegal Gambling Business Act. Section 1955(b) explicitly defines gambling to include activities involving “maintaining slot machines, roulette wheels or dice tables.”³⁸ It would be reasonable for the courts to construe any corresponding virtual casino games, which determine chance outcomes using electronic random number generators, as falling within the open ended definition of “gambling” provided by the statute.

Even less clear, however, is whether online poker sites are involved in “gambling” as defined under the Illegal Gambling Business Act because it is the players who gamble and not the site operators. Since online poker sites depend upon random number generators to determine which cards are dealt to the players, and since the poker site receives a fee for this service in the form of the rake, the Illegal Gambling Business Act could reasonably apply to online poker sites if the activity is construable as “selling chances” in accordance with Section 1955(b)(2) of the Act.

Despite the fact it is likely Internet gambling operations have violated the Illegal

Gambling Business Act, there is no published case of a prosecution of an Internet gambling business under this statute.

III.D. Money Laundering Statutes

To deal with money laundering, Congress has enacted various statutes to include 18 U.S.C. §§ 1956 and 1957, both of which address financial disposition of proceeds of various state and federal crimes, including violations of the Wire Act, the Travel Act, the Illegal Gambling Business Act, or any state gambling law punishable by over one year imprisonment.³⁹ Section 1956 encompasses several distinct crimes including: (1) laundering with intent to promote an illicit activity such as an illegal gambling business; (2) laundering to evade taxes; (3) laundering to conceal or disguise the nature, location, source, ownership, or control of funds derived from illegal activities; (4) conducting transactions in a way so as to avoid State or Federal reporting requirements (i.e., smurfing); (5) international laundering; and (6) “laundering” conduct represented to a government agent authorized to investigate or prosecute Section 1956 violations (i.e., laundering conduct by those caught in a government sting operation).⁴⁰

Section 1957 criminalizes the spending of money or assets that are criminally derived, and the elements of such an offense include: (1) knowingly (2) engaging or attempting to engage in (4) a monetary transaction (5) in criminally derived property that is of a value greater than \$10,000 and is derived from specified unlawful activity, (6) wherein the Section 1957 offense takes place in the United States or in a special maritime and territorial jurisdiction of the United States or the offense takes place outside of the United States and its jurisdictions but the defendant is a United States citizen.⁴¹

There has yet to be a reported case of prosecution of an Internet gambling operation for violations of U.S. Federal money laundering statutes. However, it is likely Internet gambling sites are involved in one or more of the placement, layering and

integration stages of money laundering.⁴² Placement is the act of depositing illegally derived funds into a financial institution or the act of converting the funds into other monetary instruments. Layering is the act of breaking up and transferring the deposited funds to different accounts and institutions in order to conceal the origin of these deposited funds. Lastly, integration is the act of using the layered funds to purchase legitimate assets or to fund further criminal activities.

Typically, Internet gambling sites require prepayment in electronic dollars (i.e., payment via online credit services or via wire).⁴³ In addition to providing credit accounts, many Internet gambling services also offer other financial services such as fund transmittal services, check cashing services, and currency exchange services.⁴⁴ Therefore, online gambling sites may collect lawful fees for these ancillary services. Furthermore, Internet gambling is a global industry and many of the customers of these gambling sites are citizens of foreign countries gambling from jurisdictions that do not prohibit Internet gambling.⁴⁵ Consequently, funds derived from illegal gambling with U.S. citizens are conceivably intermingled with lawful funds. When Internet gambling sites process these mixed funds with various financial institutions, it is conceivable that one or more of the U.S. money laundering statutes are violated.

III.E. Racketeer Influenced and Corrupt Organization Statutes

To combat organized racketeering enterprises, Congress enacted a series of laws directed to Racketeer Influenced and Corrupt Organizations (RICO).⁴⁶ Because the Wire Act, the Travel Act, the Illegal Gambling Business Act, and any violation of a State law punishable by more than one year imprisonment are all RICO predicate offenses, illegal gambling may violate the RICO statutes.⁴⁷ To establish a RICO offense, pursuant to Section 1962(c), the government must establish (1) an enterprise existed; (2) the enterprise affected interstate or foreign commerce; (3) the defendant was employed by or

associated with the enterprise; (4) the defendant conducted or participated, either directly or indirectly, in conducting the affairs of the enterprise; and (5) that defendant conducted or participated in the enterprise through a pattern of racketeering by committing at least two racketeering predicate offenses within a ten year period.⁴⁸ The RICO Act includes a civil remedies provision so a private individual may sue for damages incurred as a result of racketeering activities.⁴⁹

While there have been no published Federal prosecutions under the RICO Act of an Internet gambling site provider, there has been a civil suit to collect damages for alleged RICO violations.⁵⁰ Internet gambling litigation ensued in *In re MasterCard International Inc.* when two luckless gamblers from Kansas and New Hampshire filed suit against the credit card companies and the issuing banks for extending them credit, which allowed the gamblers to gamble at online casinos. On the following facts, the Appellate Court denied the gamblers' complaint against the credit card companies.

Plaintiffs individually accessed various casino websites where they were instructed to purchase "credit" for gambling.⁵¹ Plaintiffs entered their billing information on these websites and their credit cards were charged for the purchase of the credits. Thereafter, plaintiffs were allowed to place wagers. Net winnings would be wired to the plaintiffs and not credited to the credit card account. One plaintiff purchased \$1510 in gambling credits and lost it all. The other plaintiff purchased \$16,445 in gambling credit and lost a significant portion of it.

The plaintiffs argued that the availability of credit and the ability to gamble are inseparable. Therefore, by authorizing the online casinos to accept credit cards, by making credit available to gamblers, by encouraging the use of credit card transactions through placement of their logos on the Internet gambling sites, and by processing "gambling debts," plaintiffs alleged the credit card companies were facilitating an unlawful gambling enterprise in violation of 18 U.S.C. § 1962(c). In other words,

plaintiffs' alleged the defendant credit card companies, along with unnamed Internet casinos, had created and were operating a world wide gambling enterprise in violation of the RICO statutes.⁵² The litigation sought recovery of damages under the civil remedy provision of the RICO Act.⁵³

In order to prevail, the Appellate Court noted plaintiffs must show that (1) a person has engaged in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct or control of an unlawful enterprise.⁵⁴ Furthermore, the Court pointed out that a showing of "a pattern of racketeering activity" requires establishing two or more predicate offenses and demonstrating the racketeering predicate offenses are related to a continued criminal activity.⁵⁵ In support of their claim, plaintiffs alleged violations of Kansas and New Hampshire State felony gambling laws,⁵⁶ and Federal violations of the Wire Act, the Travel Act, money laundering, mail fraud and wire fraud. The Appellate Court concluded, for the following reasons, that these allegations were unsubstantiated so plaintiffs had failed to show a pattern of racketeering activity or the collection of an unlawful debt.

First, the Court determined only Sections (c) and (e) of the Kansas commercial gambling statute were applicable to the present case. However, the Court interpreted, under these sections, that offending conduct can only take place after some form of gambling has been completed. The Court ruled, because the credit card transactions were completed before gambling activities occurred, there was no violation of the Kansas law.⁵⁷ Regarding the allegation of crimes under the New Hampshire gambling statute, the Court held this statute was patently inapplicable to the facts of the case.⁵⁸ Implicitly, the Court's decision reflected the fact there was no evidence showing the credit card companies were involved in conducting, financing, managing, supervising, directing, or owning Internet casinos.

The Court also dispatched the plaintiffs' allegations of Federal predicate offenses

as follows. Regarding the Wire Act, the Court ruled this law was limited to sports bookmaking operations and did not necessarily apply to online casinos.⁵⁹ Since plaintiffs evidence did not establish gambling on sporting events or contests, the Court concluded no violation of the Wire Act had been established. This Court's decision, however, cemented doubt about the scope of the Wire Act, which at least one State court and the U.S. Department of Justice believed was not limited to sports-related gambling.⁶⁰ While the Justice Department has recommended Congress amend the Wire Act to explicitly encompass all forms of gambling, Congress has yet to pass any such legislation.⁶¹

Regarding plaintiffs' reliance on federal mail or wire fraud violations as predicate RICO offenses, the Court concluded plaintiffs could not show the credit card companies made any false or fraudulent misrepresentations, or reliance by the plaintiffs on such misrepresentations.⁶² The Court decided that, because online casino gambling did not violate the Wire Act, plaintiffs' gambling debts were legal. Consequently, the credit card companies could not fraudulently misrepresent the nature of the gambling debt nor could the issuing banks be involved in a scheme to defraud the plaintiffs. In addition, the Court noted plaintiffs failed to allege they relied on the defendants' representations in deciding to gamble, which, though not a statutory requirement of mail or wire fraud, courts have required when these offenses are alleged as RICO predicates.

With respect to the alleged Travel Act and money laundering RICO predicate offenses, the Court held plaintiffs' failure to establish a violation of any State or Federal law, as required under 18 U.S.C. §§ 1952 and 1957, compelled the conclusion that no Travel Act or money laundering violations had been shown.⁶³ The Court concluded that because plaintiffs had failed to prove defendant credit card companies engaged in a pattern of racketeering the case had been rightly dismissed under Rule 12(b)(6).

Even though plaintiffs lost their suit, the MasterCard litigation may have had an effect on whether some American credit card companies do business with Internet

gambling sites. For example, PayPal, Western Union and American Express apparently do not do business with Internet gambling sites,⁶⁴ although MasterCard and Visa do.⁶⁵ It is conceivable that some credit card companies have shied away from doing business with online gambling business out of fear of criminal and/or civil litigation. As a result, new offshore money transfer companies have arisen to service this niche, such as NETeller, a publicly traded company on the London Stock Exchange based in the Isle of Man.⁶⁶ NETeller derives 80% of its revenue from Internet gambling, with projected net earnings of \$32 million for 2004 and \$70 million for 2005.

IV. Changing Gambling Environments in the United States and in the World

The scope of any law depends upon the nation's ability to enforce it. Presently, there are multiple federal statutes criminalizing various Internet gambling behavior; however, prosecutions of illegal Internet gambling activities are rare. One obstacle to enforcement of U.S. Federal gambling statutes against online gambling activities is that the managing organizations are generally based in foreign jurisdictions where Internet gambling is permitted. Since Internet gambling has proven so profitable, there is little incentive for foreign countries to curb access by U.S. citizens to online gambling sites, which lawfully generate revenue and jobs in these countries. In a word, change in the global gambling environment is creating a disincentive for continued federal criminalization of Internet gambling businesses.

IVA. Expansion of Global and U.S. Gambling

Since Congress enacted various federal anti-gambling statutes, such as the Wire Act and the Illegal Gambling Business Act between 1960 and 1970, the gambling landscape in the United States and the World has changed dramatically with the advent of Internet gambling, the increase of State sponsored gambling, and the rise of Indian

gaming. Around 1995, the first offshore Internet casinos appeared.⁶⁷ By 1999 there were 700 Internet gambling sites, and in 2004, more than 1,800 offshore gambling sites received about \$7 billion in bets. About fifty-four foreign governments sanction some form of Internet gambling.⁶⁸ Interestingly, many of the governments sanctioning Internet gambling are English-speaking countries of the Commonwealth.⁶⁹

Recently, online gambling, approved by the Nevada Gaming Control Board, has become publicly available to Nevada residents located in that state.⁷⁰ While no other state has approved online gambling, gambling in some form is legal in nearly every state. As of 1999, thirty-seven states and the District of Columbia operated lotteries, and as of 1997 eleven states permitted commercial casino gambling, and about half of the states hosted Class III Indian gaming.⁷¹ In other words, there is a lot of legal land-based gambling conducted in the states, which tends to erode the rationale for continued criminalization of web-based gambling.

IV.B. Rise of Indian Gaming

Oddly, or not so oddly, enough, an unusual American player striving to legitimize online gaming are the Indian nations.⁷² About the same time Congress was enacting laws to federally criminalize gambling enterprises violating State laws, American Indian tribes began experimenting in the late '60s and early '70s with gaming in an attempt to reverse the poverty resulting from decades of genocide and pillage.⁷³ In 1987, a U.S. Supreme Court decision paved the way for further expansion of Indian gaming when the Supreme Court ruled state laws regulating bingo and card games did not apply to tribal lands governed by tribal law.⁷⁴ In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA)(102 Stat. 2467, 25 U.S.C. § 2701 et seq.) to reaffirm tribal authority to use Indian gaming to promote tribal economic development, tribal self-sufficiency, and strong tribal government. The result of this positive governmental stance on Indian gaming is that, at

the present time, in 28 states 223 tribes operate 411 Indian gaming facilities generating tribal government revenue through gambling.

Then came tribal online gaming. In 2000, the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, a federally recognized Indian tribe, operated the Lac Vieux Desert Resort & Casino, a Class II Bingo facility located in Michigan. At that time, this tribe began developing "Proxy Play Bingo," which was a form of Internet gambling.⁷⁵ During Proxy Play Bingo, the actual game was conducted live on tribal land but a principal could watch the progress of the game from a remote location via the Internet while a proxy-agent on the reservation played for the principal. The game is played as a typical bingo game until either a proxy-agent or an on-reservation bingo card holder declared bingo. The results of the game were then posted on the Internet.

When the Tribe's planned proxy bingo gaming was reviewed by the General Counsel for the National Indian Gaming Commission, which was the agency responsible for overseeing Class II Indian Gaming under the IGRA, the agency disapproved because proxy bingo would involve players who were located off the Indian reservation. The agency concluded such remote gaming via Internet would fall outside of the IGRA's safe harbor and expose the game operators to possible criminal prosecution under state and federal laws. Hearings on Internet Proxy Bingo were subsequently held before the Telecommunications, Trade and Consumer Protection Sub-Committee of the House Commerce Committee. Following the hearings, the Department of Justice sent a letter to the Lac Vieux Tribe warning them that proxy bingo would be conducted, in part, off of Indian lands and could violate state and federal laws.

The Lac Vieux Tribe filed suit against the Federal government for declaratory and injunctive relief. However, the federal court dismissed the action for lack of subject matter jurisdiction. The district court explained that the Tribe was seeking judicial review of a non-reviewable agency decision, and a judicial order pre-empting future

enforcement action, and a statement that the IGRA authorized Proxy Play Bingo.⁷⁶ While the Lac Vieux Tribe was not successful in obtaining an exception under the IGRA authorizing Internet gaming originating from the Indian reservation, the suit demonstrates interest on the part of at least one Tribe in legalizing Internet Bingo.

IV.C. U.S. Obligations Under GATS

Even more recently, additional pressure to legalize Internet gambling has been exerted by a foreign interest desiring to legalize online gambling activities in the United States through enforcement of the General Agreement on Trade in Services (GATS), an international trade treaty.⁷⁷ In this trade dispute, Antigua, an former British colony and member of the Commonwealth, filed a complaint in 2003 with the World Trade Organization (WTO) against the United States alleging that, through state and federal laws, the United States imposed a “total prohibition” against the cross-border supply of gambling and betting services from Antigua. Antigua contended such a “total prohibition” against Antigua’s Internet gambling industry was contrary to the obligations of the United States under GATS. In particular, Antigua derived millions of dollars of government revenue from licensing fees to about 119 licensed Internet gambling and betting operations, and it was in Antigua’s interest to expand Internet gambling to markets in the U.S. Antigua argued that the GATS agreement included specific commitments on gambling and betting services, and that U.S. state and federal laws prohibiting Internet gambling were contrary to the United State’s obligation to grant full market access to Antiguan gambling interests.

A Panel was established to consider Antigua’s complaint. In 2004, the Panel concluded Antigua had established a prima facie case that certain U.S. Federal laws, such as the Wire Act, the Travel Act, and the Illegal Gambling Business Act, as well as

numerous state laws, created an impermissible ban against the supply of cross-boarder Internet gambling services, which was contrary to the obligations of the United States under certain provisions of the GATS.⁷⁸ The Panel also concluded, in view of the Interstate Horse Racing Act,⁷⁹ the United States had not shown it did not permit pari-mutuel wagering on horse races via telephone and the Internet.

The United States appealed the decision of the Panel, and the matter was considered by the Appellate Body of the WTO. After considering additional arguments filed by Antigua and the United States, the Appellate Body concluded (1) the United States obliged itself under GATS to specific commitments on gambling and betting services; (2) by maintaining the Wire Act, the Travel Act and the Illegal Gambling Business Act, the United States was acting inconsistently with its GATS obligations; (3) the concerns addressed by the Wire Act, the Travel Act and the Illegal Gambling Business Act fall within the scope of public morals and/or public order and are measures necessary to protect public morals or to maintain public order; and (4) the United States had demonstrated the Wire Act, the Travel Act, and the Illegal Gambling Business Act were necessary to protect public morals and/or maintain public order, thereby justifying acts otherwise inconsistent with GATS.⁸⁰ On the other hand, the Appellate Body also concluded (5), in light of the Interstate Horseracing Act authorizing off-track wagering on horse races, the United States did not demonstrate consistent application of the Wire Act, the Travel Act, and the Illegal Gambling Business Act in accordance with its public morals/public order exception to the GATS obligations, and (6) while the United States had demonstrated the Wire Act, the Travel Act, and the Illegal Gambling Act are measures necessary to protect public morals or to maintain public order, the United States did not demonstrate, in view of the Interstate Horseracing Act, the prohibitions embodied in the above measures were applied to both foreign and domestic suppliers of remote betting for horse racing. Therefore, the Appellate Body concluded the United States had

not demonstrated that the Wire Act, the Travel Act, and the Illegal Gambling Business Act were measures either protecting public morals or maintaining public order.⁸¹

In other words, the Appellate Body decided the United States had an obligation, under GATS, to permit Internet gambling; however, this obligation could be overruled by the need to protect the public morals and/or to maintain public order. However, the Appellate Body concluded that, in light of the Interstate Horseracing Act which permitted interstate off-track betting on horse races, the measures applied by the United States to protect public morals and to maintain order, namely the Wire Act, the Travel Act and the Illegal Gambling Business Act, were inconsistently applied and did not meet the requirements of the public morals/public order exception. The Appellate Body also concluded that, by allowing interstate off-track betting on horse racing, the United States was not applying the prohibitions provided by the Wire Act, the Travel Act and the Illegal Gambling Business Act against both foreign and domestic providers of off-site gambling services relating to horse racing.

In summary, the Appellate Body of the WTO has determined the United States had not shown it was meeting its GATS obligations regarding gambling and betting services pertaining to off-track wagering on horse racing. How the United States will respond to this interpretation of GATS, as applied to Internet wagering on horse races, remains to be seen.

V. Summary

The Internet gambling industry is rapidly growing, and foreign online gambling sites are proliferating at an amazing rate. On the other hand, Internet gambling has been embraced by only one state, Nevada, and remains an activity otherwise prohibited by multiple state and federal laws. Despite a multitude of federal laws, such as the Wire Act, the Travel Act, the Illegal Gambling Business Act, RICO statutes, etc., for

combating Internet gambling, Internet access to foreign-based gambling websites is readily available to U.S. citizens and it is rare for an operator of one of these online sites to face federal criminal prosecution. At the same time, the gambling landscape in the United States is transforming so rapidly with the expansion of state-sponsored gambling, the rise of Indian gaming, and the permissive posture of the U.S. government towards interstate off-track betting on horseracing, that continued efforts to criminalize Internet gambling appear both futile and irrational. Furthermore, as the scope of land-based gambling and off-site gambling continues to expand, it is likely the United States will have continued difficulties in meeting its obligations under GATS if the United States continues its absolute ban against foreign Internet gambling services.

Thus, whether the Federal Government should continue its efforts to criminalize Internet gambling, the economics of the gaming industry and the practical limitations regarding enforcement of present or future criminal laws, lends to one conclusion: know when to fold. The time is ripe to switch from criminalization to regulation.

VI. Footnotes:

(1) *Hearing on H.R. 1223 and H.R. 21 Before the Subcommittee on Crime, Terrorism, and Homeland Security Committee on the Judiciary*, United States House of Representatives (2003)(statement of John G. Malcolm, Deputy Assistant Attorney General) *available at* www.cybercrime.gov/Malcolmtestimony42903.htm (last visited on March 13, 2005).

(2) Tony Batt, *Net bet debater mentions Station*, LAS VEGAS REV. J., February 26, 2005, at 1D.

(3) See, e.g., *People v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844, 847 (N.Y. Sup. Ct. 1999); *In re MasterCard Int'l Inc.*, 313 F.3d 257, 260 (5th Cir. 2002); *International Bancorp, L.L.C. v. Societe Des Bains De Mer Et Du Cercle Des Etrangers A Monaco*, 192 F.Supp.2d 467, 474 (E.D. Virginia, 2002).

(4) Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See para 2 n.10).

(5) *United States v. Cohen*, 260 F.3d 68, 70 (2nd Cir. 2001).

(6) Andrew Barry, *Full House*, BARRON'S, February 21, 2005, at 21.

(7) Charles Doyle, *Internet Gambling: An Abridged Overview of Federal Criminal Law*, CRS REPORT FOR CONGRESS. November 29, 2004.

(8) Other Federal gambling statues that may apply to Internet gambling include, for example, 18 U.S.C. § 1953, also known as the "Paraphernalia Act" and 28 U.S.C. § 3702 pertaining to unlawful sports gambling.

(9) 18 U.S.C. § 1084(a).

(10) 18 U.S.C. § 1084(b).

(11) Seth Gorman and Antony Loo, *Blackjack or Bust: Can U.S. Law Stop Internet Gambling*, 16 LOY. L.A. ENT. L.J. 667, 670 (1996).

(12) *In re MasterCard Int'l Inc.*, 313 F.3d 257, 262-3 (5th Cir. 2002).

(13) *United States v. Cohen*, 260 F.3d 68 (2nd. Cir. 2001).

(14) *United States v. Cohen*, 260 F.3d at 71.

(15) *Id.*

- (16) United States v. Cohen, 260 F.3d at 73.
- (17) United States v. Cohen, 260 F.3d at 76.
- (18) Id.
- (19) 18 U.S.C. § 1952(a).
- (20) 18 U.S.C. § 1952(b).
- (21) See United States v. Campione, 942 F.2d 429, 434 (7th Cir. 1991); United States v. Peskin, 527 F.2d 71, 79 (7th Cir. 1975).
- (22) Jeffrey Rodefer, *Federal Travel Act Scope and Predicates*, at www.gambling-laws-us.com/Federal-Laws/travel-act.htm (last visited February 28, 2005).
- (23) Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See para. 52).
- (24) People v. World Interactive Gaming Corp., 714 N.Y.S.2d 844, 847 (N.Y. Sup. Ct. 1999).
- (25) People v. World Interactive Gaming Corp., 741 N.Y.S.2d at 852-3.
- (26) People v. World Interactive Gaming Corp., 741 N.Y.S.2d at 850.
- (27) Id.
- (28) People v. World Interactive Gaming Corp., 741 N.Y.S.2d at 852-3.
- (29) People v. World Interactive Gaming Corp., 741 N.Y.S.2d at 852.
- (30) Id.
- (31) 18 U.S.C. §§ 1955(a) and (b).
- (32) 18 U.S.C. § 1955(b)(2).
- (33) Seth Gorman and Antony Loo, *Blackjack or Bust: Can U.S. Law Stop Internet Gambling*, 16 LOY. L.A. ENT. L.J. 667, 675 (1996).
- (34) United States v. Murray, 928 F.2d 1242, 1245 (1st Cir. 1991).
- (35) United States v. DiMuro, 540 F.2d 503, 508 (1st Cir. 1976).

(36) United States v. Schullo, 363 F.Supp. 246, 249-50 (D. Minn. 1973), aff'd, 508 F.2d 1200 (1975), cert. denied, 421 U.S. 947 (1975) ("Congress' intent was to include all those who participate in the operation of a gambling business, regardless of how minor their roles, and whether they be labeled agents, runners, independent contractors or the like. Only customers of the business were to be excluded.").

(37) United States v. E.C. Investments, Inc., 77 F.3d 327 (9th Cir. 1996); United States v. Farris, 624 F.2d 890 (9th Cir. 1980); United States v. Kerrigan, 514 F.2d 35 (9th Cir. 1975).

(38) 18 U.S.C. § 1955(b)(2).

(39) Charles Doyle, *Internet Gambling: An Abridged Overview of Federal Criminal Law*. CRS REPORT FOR CONGRESS, November 29, 2004.

(40) 18 U.S.C. § 1956; See also Charles Doyle, *Internet Gambling: An Abridged Overview of Federal Criminal Law*. CRS REPORT FOR CONGRESS. November 29, 2004.

(41) 18 U.S.C. § 1957; See also Charles Doyle, *Internet Gambling: An Abridged Overview of Federal Criminal Law*. CRS REPORT FOR CONGRESS, November 29, 2004.

(42) Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See Paras. 19 to 25).

(43) See People v. World Interactive Gaming Corp., 741 N.Y.S.2d at 847; United States v. Cohen, 260 F.3d at 70; In re MasterCard Int'l Inc., 313 F.3d at 260.

(44) Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See para. 20).

(45) Andrew Barry, *Full House*, BARRON'S, February 21, 2005, at 21; Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See para. 1).

(46) See 18 U.S.C. §§ 1961-1968.

(47) 18 U.S.C. § 1961.

(48) 18 U.S.C. §§ 1961 and 1962(c).

(49) 18 U.S.C. § 1964.

(50) In re MasterCard Int'l Inc., 313 F.3d 257 (5th Cir. 2002).

(51) In re MasterCard Int'l Inc., 313 F.3d at 260.

(52) *Id.*

(53) In re MasterCard Int'l Inc., 313 F.3d at 260-1; 18 U.S.C. § 1964.

(54) In re MasterCard Int'l Inc., 313 F.3d at 261.

(55) In re MasterCard Int'l Inc., 313 F.3d at 261-2.

(56) In re MasterCard Int'l Inc., 313 F.3d at 260, ('Kan. Stat. Ann. § 21-4304. This statute, which states that commercial gambling is a "level 8, nonperson felony," defines commercial gambling as : "(a) Operating or receiving all or part of the earnings of a gambling place; (b) Receiving, recording, or forwarding bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possessing facilities to do so; (c) For gain, becoming a custodian of anything of value bet or offered to bet; (d) Conducting a lottery, or with intent to conduct a lottery possessing facilities to do so; or (e) Setting up for use or collecting the proceeds of any gambling device"', and 'N.H.Rev.Stat. Ann. § 647:2(I-a)(b)). This statute provides that "[a] person is guilty of a class B felony if such person conducts, finances, manages, supervises, directs, or owns all or part of a business and such person knowingly and unlawfully conducts, finances, manages, supervises, or directs any gambling activity on the business premises....").

(57) In re MasterCard Int'l Inc., 313 F.3d at 262.

(58) *Id.*

(59) In re MasterCard Int'l Inc., 313 F.3d at 262-3.

(60) Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See para. 46).

(61) James D. Thayer, *The Trade of Cross-Border Gambling and Betting: The WTO Dispute Between Antigua and the United States*, 2004 DUKE L.& TECH. REV. 0013 (2004)(See para. 10).

(62) In re MasterCard Int'l Inc., 313 F.3d at 263.

(63) *Id.*

(64) Andrew Barry, *Full House*, BARRON'S, February 21, 2005, at 25.

(65) See, e.g., www.playmc.com/about.html, (last visited May 3, 2005). This Internet Gambling Website states it is licensed in Canada by the Kahnawake Gaming Commission, Mohawk Territory of Kahnawake, is operated by a subsidiary of a Fortune 500 company listed on the NYSE, offers casino gambling, sportsbetting, and online

poker, and accepts payments using Visa, MasterCard, Swatch, and Solo credit services.

(66) Andrew Barry, *Full House*, BARRON'S, February 21, 2005, at 25 ("NETeller profits from a 3% fee charged to Internet gambling companies when funds are transferred from NETeller account holders into the gaming firm's bank account.").

(67) Seth Gorman and Antony Loo, *Blackjack or Bust: Can U.S. Law Stop Internet Gambling*, 16 LOY. L.A. ENT. L.J. at 667.

(68) Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. J.L. & TECH. 26 (2004)(See para. 1).

(69) Andrew Barry, *Full House*, BARRON'S, February 21, 2005, at 22. Sportingbet, a leading online sports-wagering site and poker website, is based in the United Kingdom and publicly is traded on the London Stock Exchange. The Kahnawake Gaming Commission located on a Mohawk Indian reservation in Canada regulates multiple online gambling sites. PartyPoker is an online poker site with operations in India.

(70) Tony Batt, *Net bet debater mentions Station*, LAS VEGAS REV. J., February 26, 2005, at 1D.

(71) See Greater New Orleans Broadcasting Association, Inc. v. United States, 527 U.S. 173, 187 (1999).

(72) Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan v. Ashcroft, 2004 WL 3168240 (D.D.C.).

(73) Geoffrey Precourt, *The Next Generation*, FORTUNE, Vol. 151, No. 5, March 7, 2005, at S4.

(74) California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987).

(75) Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan v. Ashcroft, 2004 WL 3168240 (D.D.C.).

(76) *Id.*

(77) World Trade Organization Appellate Body, *United States-Measures Affecting the Cross-Boarder Supply of Gambling and Betting Services*, WT/DS285/AB/R (April 7, 2005).

(78) World Trade Organization Appellate Body, *United States-Measures Affecting the Cross-Boarder Supply of Gambling and Betting Services*, WT/DS285/AB/R (April 7, 2005)(See Section I, at 1-6).

(79) Interstate Horseracing Act of 1978, Pub. L. No. 95-515, 92 Stat. 181 (codified as 15 U.S.C. §§ 3001-3007 (2005)). The Interstate Horseracing Act provides that “[a]n interstate off-track wager may be accepted by an off-track betting system” when certain conditions specified by the Act have been met.

(80) World Trade Organization Appellate Body, *United States-Measures Affecting the Cross-Boarder Supply of Gambling and Betting Services*, WT/DS285/AB/R (April 7, 2005), at 123-5.

(81) World Trade Organization Appellate Body, *United States-Measures Affecting the Cross-Boarder Supply of Gambling and Betting Services*, WT/DS285/AB/R (April 7, 2005), at 125-126.