



# Internet Gambling: Innocent Activity or Cybercrime?

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## Abstract

*Internet gambling has presented a wide range of challenges pertaining to its acceptability by world governments, regulation of use, and potential for abuse. This paper explores the history of Internet gambling, government attempts to regulate Internet gambling, and the problems associated with regulation. Further it examines Internet gambling's costs to society and the associated criminal element and also looks at potential solutions with regards to regulation of this business. The author recommends that because of the great difficulty in banning Internet gambling, governments should regulate and tax these online business ventures. The author suggests that because of the unclear legal status of Internet gambling, there must be a legislation explicitly defining what is and is not permissible activity, as well as an emphasis on regulation by world governments and self-regulation by the Internet gambling businesses.*

**Keywords:** Internet Gambling; Regulation; Criminal Element; Business

## Introduction

Since its arrival on the gambling scene, Internet gambling has created significant issues and disputes pertaining to its legal status, regulation schema, and associated societal issues. Internet gambling is considered a global issue, as well as an international business venture, which has an effect upon numerous countries (Andrle, 2004, p. 1389). Despite its global impact, Internet gambling is primarily utilized by American citizens. Since it is an activity in which the people of many countries participate, Internet gambling presents unique challenges to the United States government regarding its regulation (Tedeschi, 2003).

Gambling is an industry which has undergone many changes throughout its existence. Though there have been periods, in which it was considered an immoral activity, most people now consider it an acceptable form of entertainment (Deverensky, Gupta & Magoon, 2004). Gambling is generally controlled by state governments in an exercise of their police powers (Rose, 2005). However, Internet gambling's interstate and international scope necessitates its governance by federal law. There have been numerous attempts to utilize current federal statutes and to pass new legislation to effectively regulate Internet gambling (Parke & Griffiths, 2004).

The approach currently utilized by the U.S. is to prohibit all Internet gambling. Until recently, the U.S. government relied almost exclusively upon the Wire Act to enforce its

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prohibition (Frese, 2005). However, in 2006 the U.S. government enacted federal legislation that specifically addresses Internet gambling. This was accomplished through the passage of the Unlawful Internet Gambling Enforcement Act (31 U.S.C. § 5363), hereafter referred to as the UIGEA. However, this legislation has proven largely ineffective in providing guidance on Internet gambling regulation, and has failed to successfully prohibit online gambling (Rose, 2008). Because of the difficulties in utilizing federal statutes to govern Internet gambling, some states have also enacted their own laws and policies regarding online gambling activity (Chiang, 2007).

Since Internet gambling is extremely difficult to regulate, a complete prohibition creates extensive problems for law enforcement. Bringing legal action against Internet gambling participants presents significant issues for courts in gaining jurisdiction over the participants, determining an appropriate choice of law, and enforcing a judgment (Reidenberg, 2005). There are also many societal issues associated with Internet gambling, including an increase in compulsive gambling, abuse by minors, money laundering, and the proliferation of cybercrimes. Since prohibition has proven ineffective, it may be prudent for governments to allow online gambling, and subject businesses to regulation and taxation.

## **Background**

In the year 2000, investors believed that most Internet industries would be able to make a considerable profit as the Internet became a prevalent force in the economy. Though many have been unsuccessful, the Internet gambling business has been one of the most profitable (Furlong, 2005). Over 2,000 Internet-based gambling businesses are currently in operation (American Gaming Association). In 2005, the total revenue for Internet gambling businesses exceeded \$12 billion (Herron, 2006). It is expected that online gambling will generate yearly revenues exceeding \$20 billion by 2010 (McMullan & Rege, 2007). There are 12 million people in the world who participate in Internet gambling on a regular basis. Over 5.3 million of these participants are American citizens (Tedeschi, 2003). While some states have legalized forms of casino gambling, Internet gambling is not permitted in any U.S. state. States view many aspects of casino gambling as favorable, such as job creation and the local economic stimulation. However, Internet gambling does not provide these benefits. Instead, Internet gambling is generally viewed as a vice activity with the potential to bring great harm to society (Pope, 2005). Internet gambling has been associated with negative economic consequences such as a reduction in tax revenue and creating significant problems for banks and credit card companies (Hammer, 2001). The perception of its undesirable effects have resulted in Internet gambling's continued prohibition throughout the U.S. However, there are many practical and legal concerns with prohibition.

## **Internet Gambling Regulations**

Despite its acceptance by many world governments, the U.S. prohibits all forms of Internet gambling. There have been numerous attempts to slow this industry's growth and to prevent Americans from taking part in this activity. The federal government uses its powers given by the Commerce Clause of the U.S. Constitution to govern gambling "where constitutional provisions, such as with Indian gambling, were relevant, where there was concern for the involvement of organized crime, or where the federal government might have to settle a dispute between states" (Frey, 1998). In August, 2002,

the U.S. Department of Justice stated that it interpreted online gambling to be illegal for U.S. citizens when the Nevada Gaming Control Board was informed “that Internet gambling was prohibited under a series of federal laws” (E-Commerce, 2002). The Department of Justice stated that when prosecuting an online gambling action, it would consider the gambling activity to have taken place within the physical vicinity of the gambler, and within the jurisdiction of the website’s location. Therefore, a U.S. state could be held responsible for Internet gambling even if the majority of activity is taking place outside the U.S. (Andrle, 2004).

Considering the fact that for many years there was no legislation explicitly banning Internet gambling, the government relied upon provisions of other acts that were interpreted to include an online gambling prohibition. However, after numerous attempts by Congress to pass a law specifically addressing online gambling, President George W. Bush signed the Unlawful Internet Gambling Enforcement Act on October 13, 2006. Though this Act specifically imposes a ban upon Internet gambling, the legality and enforceability of this law has been surrounded by issues, confusion, and controversy.

### **Unlawful Internet Gambling Enforcement Act**

Despite hope that the first piece of legislation specifically addressing Internet gambling would do much to eradicate associated problems; the UIGEA has been riddled with criticism. First, it is questionable as to whether the Act was properly considered by members of Congress at the time it was passed. The UIGEA is contained within Title VIII of the SAFE Port Act, which addresses the security of United States ports. In a world after September 11, 2001 and at a time in which national security breaches were becoming commonplace, it would be difficult to find a Congressperson who did not support strengthening U.S. port security. The SAFE Port Act passed by a vote of 421-2 in the House of Representatives, and 98-0 in the Senate (H.R. 4954). It is unfortunate that while they were voting for an increase in national security, the U.S. Congress also passed a measure that further contributes to the unclear legal status of Internet gambling.

The UIGEA criminalizes the receipt of money for any unlawful online gambling transaction. The UIGEA provides sentences of up to five years in prison for violators. However, the UIGEA does not clearly define what activities constitute an unlawful online gambling transaction. The UIGEA’s definition of unlawful Internet gambling includes only gambling activity made illegal under existing state or federal law (31 U.S.C. §§5361-5367). However, it was the lack of clarity in existing legislation that the UIGEA was intended to elucidate. Historically, the Wire Act has been the mechanism most frequently used by the Department of Justice in the ban on Internet gambling. However, the legitimacy of the Wire Act’s applicability to online gambling has been frequently challenged (Pope, 2005). The UIGEA does not take any steps to clarify the application of the Wire Act to Internet gambling. The drafting of the UIGEA would have been an ideal time for lawmakers to clearly define illegal online gambling transactions and eliminate the need for questionable interpretation of legislation passed before the Internet even existed. Because of its failure to define the criminal act being prohibited, the UIGEA cannot be properly utilized in prohibiting online gambling. Despite the apparent victory of the UIGEA’s passage, the ambiguity of the Act forces the government to continue looking to unclear interpretations of other laws in its attempt to enforce a ban on Internet gambling.

The only crime addressed by the UIGEA is the knowing acceptance of money transfers for illegal Internet gambling (31 U.S.C. § 5363). The UIGEA does not criminalize

actually transferring money for online gambling, only the receipt of those funds. In essence, while the UIGEA has criminalized a financial institution's processing money for Internet gambling transactions, it does nothing to restrict the gambling activity of players. The UIGEA does not criminalize placing bets over the Internet, nor does it prohibit sending or transferring money for Internet gambling (Rose, 2008). This is an ineffective and impractical method of stopping Internet gambling. Because of the significant number of transactions large financial institutions process daily, it is inevitable that a financial institution will unwittingly accept online gambling transactions. However, it is unlikely that an individual or business would take the affirmative act of transferring money to place an online wager without knowing the purpose for which the money was being used.

At this point in time, there is no law that specifically prohibits placing a bet over the Internet. This is particularly problematic because it is individual gamblers who actively participate in online gambling, not the financial institutions that process the payments. Placing the sole responsibility for online gambling in the hands of financial institutions is analogous to allowing a burglar to go free, and instead punishing the merchant who sold him the crowbar used to break into a home. While financial institutions may have some complicity in the continuation of Internet gambling, allowing them to be the sole targets of law enforcement is by no means a comprehensive method of regulating this industry.

Another significant problem with the UIGEA is that the responsibility of identifying gambling transactions has been given entirely to financial institutions (31 U.S.C. § 5364). This will likely cause these businesses to cease many legal transactions in order to avoid potential penalties. Monitoring each transaction will increase the cost of doing business by billions of dollars each year, which will likely be shifted onto customers. Requiring financial institutions to place identities on specific transactions will certainly cause significant holdups and greatly increase the potential for breakdown in the financial system. Effectively monitoring each transaction and identifying those associated with illegal Internet gambling is virtually impossible. Financial institutions transfer trillions of dollars a day throughout the world, making individual transaction identification simply too cumbersome for any business to handle (Rose, 2008). Furthermore, the Act does not clearly specify what constitutes as an illegal Internet gambling transaction, making it impossible for financial institutions to identify and stop the correct transactions, even if they were able to examine each one individually.

Another shortcoming of the UIGEA is that it does not give any guidelines for recognizing and dealing with Internet gambling transactions. If financial institutions are given the responsibility of screening transactions, but are not given any sort of uniform guidance about how to do this, it will lead to disparate screening among institutions. Charging financial institutions with detecting law violations without governmental guidance leaves too much legal discretion in the hands of these businesses. The UIGEA essentially requires financial institutions to act as law enforcement officers in detecting and stopping illegal Internet gambling (Tripoli, 2008). Some will certainly be more lenient than others in reporting these transactions, which will lead to financial institution shopping among Internet gambling businesses.

### **Wire Act of 1961**

Before the passage of the UIGEA, the law most frequently used to regulate online gambling was the Wire Act. This law was passed to aid state governments with

“enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of...wire communication facilities which are or will be used for the transmission of certain gambling information in interstate and foreign commerce” (McGinty, 2005). The Wire Act makes it illegal to take part in a betting or wagering business, and to deliberately use a wire device to communicate a wager on a sporting event over interstate or international lines. The Wire Act also prohibits using a wire device to transmit money or information for a bet or wager on a sporting event. To be responsible for a violation of the Wire Act, an individual must participate in gambling activities frequently and extensively, and must know that the acts are being committed. The Wire Act is limited in that a conviction requires involvement in a betting or wagering business, is not applicable to individuals who place bets over the Internet, and is only applicable to sports betting (Wire Act, 1961).

Several recent cases have helped clarify the Wire Act’s applicability to Internet gambling. In *United States v. Cohen*, Jay Cohen ran the World Sports Exchange from an offshore sports gambling site, and was convicted of a Wire Act violation. The court held that Cohen had violated the Wire Act because such betting is illegal in New York (*U.S. v. Cohen*, 2001). The Second Circuit Court of Appeals “took a strong stand against Internet gambling, putting all offshore Internet gambling businesses...on notice that they may be criminally liable if they accept bets transmitted from within the U.S.” (Manter, 2003). Similarly, it was held in *People ex rel. Vacco v. World Interactive Gaming Corp.*, that an online gaming business operating from Antigua had violated the Wire Act, and that the business was subject to jurisdiction in the state of New York (*People ex rel. Vacco v. World Interactive Gaming Corp.*, 1999). This holding was extended in *U.S. v. Kaczowski*, in which a New York district court held that an Internet gambling operation had violated the Wire Act since the bets at issue were made in New York. The fact that the bets were accepted in a country where Internet gambling was permitted did not preclude a Wire Act violation (*U.S. v. Kaczowski*, 2000).

However, the scope of the Wire Act is not broad enough to regulate all Internet gambling businesses. In *In re Mastercard International*, a Louisiana district court held that the Wire Act did not apply to Internet gambling for gaming activities other than sporting events. The case was dismissed because the business engaged only in online casino gambling (*In re Mastercard Int’l*, 2001). Because of the significant amount of ambiguity with enforcing an Internet gambling prohibition by means of the Wire Act, one of the original goals of the UIGEA was to ensure the Wire Act’s applicability to all Internet gambling transactions. However, the UIGEA has failed miserably in extending the Wire Act’s enforceability.

### **Issues with Federal Gambling Regulations**

In addition to the difficulty of applying federal law to Internet gambling, the government also encounters many problems in actually enforcing the law. One major problem is the remote locations of most Internet gambling sites. While Internet gambling is prohibited in the U.S., these operations often have licenses and are legal businesses in locations such as the Caribbean, Costa Rica, and various countries throughout Europe. Since the only people who can be prosecuted under the Wire Act are those who are involved in the businesses, the majority of those who could be held responsible are located outside the U.S. (Frese, 2005).

## Personal Jurisdiction

The struggle pertaining to which court has jurisdiction over Internet transactions is a significant issue in a society in which technology plays a dominant role (Reidenberg, 2005). Internet transactions allow individuals throughout the world to interact. As online transactions increase, so do the number of associated disputes. This creates a problem for any court attempting to gain jurisdiction over an online dispute. Many technology companies advocate that online activities should be granted legal immunity (Reidenberg, 2005). In order to gain personal jurisdiction over a dispute, “a defendant must have sufficient minimum contacts with the forum ‘such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice’” (*Int’l Shoe Co. v. Washington*, 1945). Many people who hold this viewpoint of legal immunity strive to use the distance created by Internet technology as the basis for denying the existence of sufficient minimum contacts.

A lawsuit between a French organization and the American company Yahoo! exemplifies the struggle between technology and jurisdiction. In France it is illegal to display or transmit any images of Nazi symbolism. However, Yahoo! allowed the transmission of images depicting Nazi symbols on its website, which could be accessed in France. These symbols are protected under the U.S. Constitution, yet are banned in France. This created a problem when a French organization brought suit against Yahoo! for transmitting the images. Yahoo! argued that since it was operating from within the U.S., French law was inapplicable. Yahoo! also argued that Internet technology prevented the company from complying with French law since images on a website cannot be exclusively confined to users located in the U.S. (Reidenberg, 2005). The French courts rejected this argument and stated that Yahoo! must be held accountable under French law. A California federal court held that the French government could not exercise jurisdiction over an American company (*Yahoo v. La Ligue Contre Le Racisme*, 2001). However, this holding was overturned by the Ninth Circuit Court of Appeals, which held that “the California court had no personal jurisdiction over the French parties, and that France had every right to hold Yahoo! accountable in France” (Reidenberg, 2005). The Ninth Circuit dismissed the case in 2006. The long process of merely determining which court could exercise jurisdiction over this dispute shows the many difficulties in adjudicating online disputes.

## Choice of Law

Another issue is deciding what law will be applied in determining an outcome of the case. This is a difficult question, as the Internet and its users are widespread and not located in a centralized geographical area. One of the main goals of conflict of laws jurisprudence is “to avoid forum shopping and promote an efficient resolution of disputes when cases have international dimensions” (Reidenberg, 2005, p. 1957). There has been some progress in clarifying the choice of law for online disputes. In 2000, U.S. law was successfully applied to a Canadian company in *Twentieth Century Fox Film Corp v. iCrave TV*, a dispute regarding iCrave’s airing of videos within Canada (*Twentieth Century Fox v. iCraveTV.com*, 2000). The Children’s Online Privacy Protection Act, “contains a choice of law provision in its definitions that applies the protections of the American statute to any website, regardless of its place of origin, that collects personal information from children” (Reidenberg, 2005, 1957). Any organization that collects personal information within the European Union is subject to a similar choice of law rule under the European

Directive (Directive 95/46/EC). One problem with these provisions is that some people may conduct this activity from a “safe haven” location. For example, the First Amendment of the U.S. Constitution protects hate speech, pornography, and privacy data. Since various aspects of these things are forbidden in many countries, people who engage in such activities may seek refuge in the U.S. to avoid prosecution (Reidenberg, 2005, p. 1958). Likewise, Internet gambling may be conducted from a safe haven location.

### **Enforcement of Judgments**

Once a court has heard a dispute, the distance and anonymity of the Internet presents difficulty in enforcing a judgment. It is particularly difficult for a court to enforce a judgment against a company whose operations are located outside the country, as is the case with many Internet gambling businesses. Language issues in the previously-mentioned Yahoo! case greatly distorted the intent of the French court’s decision when it was translated into English. It is challenging for a court of one nation to impose its judgment upon a foreign company when the company is not entirely sure what action is required by the foreign court. This confusion in the issuance of orders creates a tremendous obstacle in the enforcement of judgments over matters with an international scope, such as online gambling (Reidenberg, 2005, pp. 1958–59).

The location of Internet gambling operations also presents an enforcement issue because the countries where the operations are located would have to cooperate with American law enforcement officials in order to bring about a successful prosecution (Pope, 2005). The countries where Internet gambling operations are located often rely on these businesses for the employment of their citizens. Therefore, a host country’s government would likely be unwilling to assist U.S. law enforcement in prosecuting and shutting down these businesses.

### **Societal Costs**

One question that must be addressed is whether Internet gambling should be banned, regulated, or left alone. Gambling has long been considered a victimless crime, in that all people who take part in the illegal transaction are willing participants. But as is the case with other victimless crimes, there is a price that is often paid for online gambling. Increases in hacking, identity theft, stalking, and cyber extortion have shown us that while the Internet is a tremendous invention with many advantageous uses, the crimes associated with its use have taken a toll on society.

### **Increase in Gambling Addiction**

Many people have a problem with compulsive gambling. Because of the anonymity of the Internet, easy access to online gambling sites often aggravates an individual’s gambling problem (Griffiths, 2003). By using these sites, a compulsive gambler is able to indulge their addiction from the comfort of their own home without witnesses. One reason that some credit card companies refuse to transact Internet gambling payments is that so many compulsive gamblers also have significant financial problems. The financial issues of these compulsive gamblers then become the problems of the credit card companies when gamblers are unable to pay their credit card bills (Ormand, 2004). Credit card companies must also consider the possibility that these compulsive gamblers may not be required to pay for charges incurred from Internet gambling because the law does not require the

enforcement of most gambling debts. Credit card companies also take a risk of compulsive gamblers making fabricated reports of their card being stolen in order to avoid paying the charges made to Internet gambling businesses (Rose, 2003).

It is thought that Internet gambling is more frequently utilized by pathological gamblers and is more closely associated with destructive behavior patterns than casino gambling (National Gambling Impact Study Commission, 1999). A 2002 study shows that while Internet gambling is not the most prevalent form of gambling among Americans, it is those who utilize Internet gambling that are more likely to have serious gambling problems. The study revealed that 74% of online gamblers were either problematic (Level 2) gamblers, or pathological (Level 3) gamblers. In contrast, only 22% of casino gamblers, who did not participate in online gambling, reached such destructive levels (Ladd & Petry, 2002).

Studies have shown that when participating in gambling activities, people prefer small, intimate gatherings. This preference leads to more pathological gambling behavior associated with Internet gambling than with a casino simply because people feel most comfortable in their own home. When people go to a casino, at some point they will leave and return home. When someone is able to engage in this activity from the comfort of their living room, there is little incentive to stop. When the ability to gamble is combined with the familiarity of one's home, someone with pathological gambling tendencies can easily spiral out of control (Tselnik, 2007).

### **Issues for Young Populations**

Despite the legal prohibitions against minors taking part in gambling activity, research has shown that underage individuals do participate frequently in Internet gambling. One reason is that minors have extremely easy access to Internet gambling forums. While age restrictions in casinos are generally quite rigid, the age checks on Internet gambling sites are easily circumvented. Rather than having a security person check identification, many sites simply ask a participant whether they are of legal gambling age. Others ask for an identification number for age verification. Minors are able to get around this regulation by giving an identification number obtained from individuals of any age. Often participants are not asked about their age, since many gambling websites operate from locations where there is no minimum age for gambling.

Allowing minors such easy access to online gambling creates a problem for society since individuals who begin gambling at a younger age have a greater tendency to have serious gambling problems later in life (Deverensky et al, 2004). Studies have shown that the rates of pathological gambling are much higher for adolescents than they are for adults. It is estimated that proportionally, adolescent populations have pathological gambling rates approximately three times that of adults (National Research Council, 1999). Research has also shown that adolescents with gambling problems take greater risks, lie more frequently, have a heightened suicide risk, have a higher risk of multiple addictions, and are more frequently involved in criminal activity (Deverensky et al, 2004).

These issues for adolescents are particularly relevant to Internet gambling because of the great appeal of gambling online to a generation that enjoys using advanced technology, and which relies upon the Internet throughout many aspects of their daily lives. The Internet is a very popular medium for adolescents to use for gambling since it can be utilized in their homes without the intrusion of their parents or casino security. Internet gambling is also appealing because of the offers for free games and rewards to those who

participate in the games offered by that site. Adolescents are particularly susceptible to the lure of Internet gambling because they often do not understand that gambling involves games of random chance. Many minors believe that they will improve with practice, which leads them to continue participating with the belief that they will be able to control the events of the game. Many gambling sites attempt to lure adolescents by setting up practice sites where no money is needed to play. This subsequently encourages minors to make a switch to a “for money” Internet gambling site. These practice sites are appealing because they make adolescents feel like highly skilled gamblers who are immune from the development of a gambling problem. These online enticements directed at a technology-driven generation means that the problems associated with Internet gambling pose a very significant risk to today’s adolescent population (Messerlian, Byrnes & Deverensky, 2004).

Online gambling has also been shown to be particularly prevalent among college-age individuals (Kindt & Joy, 2002). Though they are at a legal age to gamble, young college students are especially vulnerable to the risks associated with Internet gambling. Many of them have only recently begun living alone and are having their first experiences with the newfound privacy of being away from their families. This independence gives college students the long-awaited ability to have complete control over their activities. Most college students spend a significant amount of time on the Internet each day. Online gambling sites provide a means of stress relief and a welcome break from academics. When a college student is writing a paper for a course or completing an online assignment, it is very easy to for them to switch back and forth between this and an online gambling activity. It has been suggested that the lure of these gambling sites, combined with their easy access to underage individuals and young adults, may be creating a new breed of problem gamblers within today’s youth. This will then lead to a host of social and economic problems that will be faced by this generation in future years (Messerlian et al, 2004).

### **Proliferation of Cybercrimes**

There is no doubt that the Internet has transformed the society in which we live and work. Communications and transactions that used to take hours, days, or even weeks can now be completed within mere moments. Rather than taking a trip to the bank, we now conduct complicated financial transactions over the Internet. We can communicate with multiple people in different countries from the comfort of our homes. Just as these modern conveniences were unheard of few years ago, so were cybercrimes such as hacking, phishing, cracking, and intellectual property theft. The Internet has also added a new dimension to crimes that are familiar to us, such as stalking, harassment, extortion, and identity theft, which can now be committed through the use of a computer. Internet gambling also poses issues in relation to a significant new area for money laundering potential (Palmer, 2007). As new dimensions of human interaction are opened for us, criminals who wish to exploit these advances are sure to follow closely.

These cybercrimes present a set of unique issues for the criminal justice system. One of the most perplexing is that while the culprit is a very real threat to the online victim, the offender is anonymous. This lack of eyewitness identification makes it extremely difficult for law enforcement to identify and catch these criminals. Cybercriminals also have a greater range of victim selection. Because these crimes are committed over the Internet, there is no need for the perpetrator to be located in physical proximity to their victim. A cybercriminal has the ability to target anyone who is online. These wrongdoers have

inflicted an extensive amount of damage to a large number of victims, thus giving law enforcement agencies a strong interest in regulating the online channels through which these criminals continue to violate the law. Several of these cybercrimes are closely associated with Internet gambling.

One of the crimes that most frequently accompany Internet gambling activity is cyber-extortion. The way that most cyber-extortion is conducted is through the installation of virus programs on computers belonging to online gambling businesses. The viruses eventually consume all of the computer's available disc space, which effectively prevents online gamblers from utilizing the services of the online gambling business (McMullan et al, 2007, pp. 650-651). So long as the attack continues, customers cannot take part in Internet gambling, and any profits that would be seen from their business are lost.

After it becomes apparent to the gambling operation that their business is under attack, they are then contacted and a demand for money is made in exchange for cessation of the attack. The amount of money involved has frequently been quite substantial. The average demand amount is between \$20,000 and \$60,000 (McMullan et al, 2006, p. 653). Culprits of cyber-extortion often choose to conduct their attack when the activity of the gambling business is at its peak, such as during major sporting events. Because the amount of money demanded is often substantially less than the amount that will be lost if the attack continues, many Internet gambling business have chosen to simply comply with the demands. However, the problems generally do not end with the payment of an extortion demand. When cyber extortionists find a company that is willing to pay in order to prevent a loss of revenue for being offline, they often go back to the same company with more demands. Generally, the cyber-extortion attacks cease for fewer than six months before new demands are made (McMullan et al, 2006, p. 652-654).

The most visible of these cyber-extortion attacks are not performed by individual criminals, but by highly organized cells with a clear chain of command and a relatively large operating budget. The organization of these cyber-extortion networks indicates that there may be a meaningful comparison to the organized crime presence so often seen in casino gambling venues. As with other cybercrimes, it has proven practically impossible for law enforcement to track and punish those who commit large-scale cyber-extortion. In reality, "many police forces simply [do] not possess the capacity to investigate crimes that were committed from remote places in sovereign jurisdictions where the criminals were not even present" (McMullan et al, 2007, p. 659). Most law enforcement agencies are preoccupied with crime-fighting agendas in their own jurisdictions, and are unable to effectively monitor Internet-based crimes. Law enforcement agencies are also faced with the reality that the mechanisms for committing technologically-based crimes change rapidly. Indeed, the deputy director of SRI International's Computer Science Lab stated that "we've known about [the threat from] botnets for a few years, but we're only now figuring out how they really work, and I'm afraid that we might be two to three years behind in terms of response mechanisms" (Naraine, 2006). There is little doubt that by the time appropriate response mechanisms are created, cybercriminals will have discovered a new method of committing these online crimes.

Indeed, the web-based element of Internet gambling may even exacerbate the criminal elements of traditional gambling. Research indicates that in addition to traditional organized crime alliances, advanced technology may give rise to cybercriminal organizations which would fail to exist without information and communications

technology. While traditional organized crime organizations necessitate that the participants be acquainted with one another, the advent of the Internet allows people who know each other only through online means to work together to accomplish a common criminal goal (Choo & Smith, 2007). It is highly problematic for society to condone an activity that encourages the formation of additional organized crime groups which would be impossible to form and maintain without the assistance of advanced technology.

### **Potential Solutions**

The U.S. government has long advocated a need for clearer and more defining legislation in regards to online gambling. In order to resolve the problems associated with the prohibition of Internet gambling, it will be necessary for gambling statutes to clearly define what behavior is and is not acceptable under the law, and who can be held responsible for law violations. It is also necessary for the government to unambiguously set forth penalties for law violators, and to ensure that these consequences are strictly enforced.

However, in order to effectively regulate online gambling, and to avoid the extensive problems that frequently accompany gambling among at-risk populations, the government should focus on solutions that encourage management and supervision, rather than total prohibition, of online gambling (Andrle, 2004). This is the most prudent solution, since a total prohibition of online gambling has proved impossible for the government to effectively implement. A total prohibition will not be able to realistically bring about the goal of reaching those populations who stand to be injured by online gambling, such as minors and compulsive gamblers. With today's rapidly advancing technology and the skills of many computer users, it is far too easy for these individuals to circumvent an Internet gambling ban. Some experts even suggest that a total prohibition of online gambling would worsen the problem by discouraging legitimate American casinos, who are equipped with thorough and effective security measures, from establishing online gambling businesses and further legitimizing the Internet gambling industry. Discouraging the entrance of these respected businesses into the Internet gambling industry will encourage the expansion of disreputable online gambling businesses, which have little or no interest in assisting the government by weeding out participants who are underage or who have significant problems with compulsive gambling (Loscalzo & Shapiro, 2000, p. 19). It has been suggested that regulation is necessary because prohibition does not prevent, but rather exacerbates money laundering and fraud (Hugel & Kelly, 2002).

Another issue with prohibition is that this rapidly advancing technology will continue to grow and change in ways that are not anticipated by prohibitive gambling statutes. Though it is impossible to foresee exactly how this will occur, new technological innovations will continue to advance in a way that will provide methods for Internet gambling participants to sidestep prohibitive legislation. Since people are unable to foresee future challenges, lawmakers are forced to be reactive rather than proactive in producing legislation to regulate or prohibit Internet gambling (Parke et al, 2004). Since Internet gambling comprises a significant portion of Internet-based revenue, online gambling businesses have a vested interest in seeking out and pursuing ways to get around prohibitive Internet gambling statutes, and will likely do so through the use of changing technology.

Another argument against total prohibition is that banning online gambling effectively closes down one of the only Internet-based businesses that have shown itself

capable of regularly producing a profit. A complete ban on Internet gambling is an unwise policy because of the tremendous amount of revenue that the government is passing up by forcing Internet gambling businesses into the jurisdiction of other countries. It has been estimated that the legalization of online gambling could generate taxation income for the government in excess of \$2.5 billion (Internet Poker could Net U.S. Billions in Tax, 2006). If the government were to allow Internet gambling businesses to operate within the United States, online gamblers would be paying money to American businesses, which would then be pumped back in the U.S. economy. The U.S. government would also be able to generate a significant amount of revenue by taxing these domestic businesses. Instead, by forcing these online gambling businesses offshore, American citizens, who comprise a significant percentage of online gambling participants, are paying their money to foreign businesses and thereby fueling the economies of other countries.

The British government has legalized Internet gambling within the borders of its nation. Great Britain has subsequently realized a significant amount of revenue from governmental taxation and regulation of these businesses (Timmons & Pfanner, 2006). If the American government was to follow the British lead of imposing regulation rather than prohibition, similar amounts of taxation revenue would soon be realized. The ability of American online gamblers to transact with American gambling businesses would likely strengthen the American economy by keeping money and business internal. By licensing online gambling, businesses in compliance with the law would then be permitted to run regulated online gambling establishments. This would serve to legitimize the Internet gambling industry and help push out the fraudulent companies that prey on vulnerable populations.

Forward-thinking legislators have realized that the prohibition of Internet gambling has been futile, and that it is in the government's best interest to regulate and tax these profitable businesses. In April, 2007, Massachusetts Representative Barney Frank and Texas Representative Ron Paul introduced the Payments System Protection Act, which would prevent the government from enacting further regulations to enforce the UIGEA (Payments System Protection Act, 2008). Frank and Paul's bill called for the licensure and government regulation of online gambling businesses. Provisions of the bill are aimed at limiting the ability of minors and compulsive gamblers to access online gambling, and protecting against money laundering and fraud (Kaplan, 2007). However, the bill was defeated by the House Committee on Financial Services. On September 11, 2008, Frank introduced a new version of the Payment Systems Protection Act. The goal of this Act is to simplify the process of screening illegal online gambling transactions for financial institutions. This Act requires the Department of the Treasury and the Federal Reserve to produce a set of guidelines to instruct financial institutions on exactly what procedures must be followed in enforcing the current ban (Costigan, 2008).

### **Importance of Self-Regulation**

Because of the absence of a coherent, uniform set of guidelines for the regulation of Internet gambling, it is extremely important for online gambling businesses to practice self-regulation in order to establish themselves as a credible business operation. The first self-regulation was started by the creation of the Interactive Gaming Council in 1996. This group voices its support for the government regulation of Internet gambling, and has tried to help establish Internet gambling as an ethical, regulated, and credible industry. In

2003, the Interactive Gaming Council formed the eCOGRA organization. eCOGRA stands for e-Commerce Online Gaming Regulation and Assurance. This organization strives to work for “player protection, fair gaming, and responsible conduct by operators, without affecting the rights and operations of existing jurisdictions and institutions” (Furlong, 2005, p. 213). eCOGRA operates under a set of standards called eGAP, which represents generally accepted principles of online business. eGAP consists of three basic standards, which are Player Protections, Fair Gaming, and Responsible Conduct. Internet gambling sites which meet eCOGRA’s standards in these three areas are then given permission to show eCOGRA’s seal of approval. This seal identifies these Internet gambling businesses as sites that have been inspected and examined for authenticity and credibility.

Though the formation of eCOGRA has allowed for significant progress in establishing Internet gambling as a legitimate industry, it does not take the place of governmental regulation of the business. One of the goals of eCOGRA is that self-regulation of the Internet gambling industry will allow the governments of various nations to recognize the needs and desires of the Internet gambling industry, and to translate these standards into governing laws. There are many credible Internet gambling businesses that still strongly desire government regulation of Internet gambling, since government regulation is what will truly establish Internet gambling as a legitimate industry (Furlong, 2005).

## **Conclusion**

Internet gambling is both a highly profitable online business, and a form of entertainment in which many individuals frequently take part. The law currently prohibits Internet gambling by means of the Unlawful Internet Gambling Enforcement Act and the Wire Act. Despite their application to online gambling, the UIGEA and the Wire Act have both been plagued with substantial issues and have proven quite ineffective at preventing Internet gambling from taking place. Regulation of Internet gambling presents significant challenges in obtaining jurisdiction over a dispute, making an appropriate choice of law, and enforcing judgments rendered by a court. Despite these problems, the U.S. government maintains that it has a strong interest in prohibiting Internet gambling because of its easy access to minors and compulsive gamblers, as well as potential for associated fraud and money laundering activity.

There have been many arguments against the enforceability of proposed regulatory schemes. However, the potential problems that may result from government inaction, such as an increase in problems for vulnerable populations and the growth of new web-based crimes indicate that some type of government action is quite desirable. Due to the virtual impossibility of enforcing a total ban on Internet gambling, it is recommended that the government regulate and tax online gambling businesses that have proved themselves to be in compliance with government standards. This would allow the government to see significant revenue from taxation, contribution to the economy, and the legitimization of law-abiding businesses. It is also recommended that the government encourage online gambling businesses to join with similar businesses in the process of self-regulation. Since such a large number of people participate in online gambling, and the growth in the business has been tremendous, the government must realize that a complete ban is not practical, but that many societal benefits can be derived from appropriate regulation.

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