

10-1-1996

Gambling On-Line: For a Hundred Dollars, I Bet You Government Regulation Will Not Stop the Newest Form of Gambling

Scott M. Montpas
University of Dayton

Follow this and additional works at: <https://ecommons.udayton.edu/udlr>



Part of the [Law Commons](#)

Recommended Citation

Montpas, Scott M. (1996) "Gambling On-Line: For a Hundred Dollars, I Bet You Government Regulation Will Not Stop the Newest Form of Gambling," *University of Dayton Law Review*. Vol. 22: No. 1, Article 9. Available at: <https://ecommons.udayton.edu/udlr/vol22/iss1/9>

This Comment is brought to you for free and open access by the School of Law at eCommons. It has been accepted for inclusion in University of Dayton Law Review by an authorized editor of eCommons. For more information, please contact mschlangen1@udayton.edu, ecommons@udayton.edu.

GAMBLING ON-LINE: FOR A HUNDRED DOLLARS, I BET YOU GOVERNMENT REGULATION WILL NOT STOP THE NEWEST FORM OF GAMBLING

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	163
II. AMERICA'S "NEW NATIONAL PASTIME" AND ITS "NEWEST FRONTIER" ...	165
A. <i>The Gambling Explosion</i>	165
B. <i>Internet Gambling</i>	167
III. SHOULD INTERNET GAMBLING BE LEGAL?	169
A. <i>The Benefits and Burdens</i>	169
1. Unsecured Money Transactions	171
2. Unregulated Operations	171
3. A Detached Environment	172
4. Underage Gambling	172
IV. REGULATING INTERNET GAMBLING	173
A. <i>An Explanation of the Internet</i>	174
B. <i>Inadequate State and Federal Laws</i>	176
1. Minnesota: An Example of the State Approach	177
2. Federal Law	179
V. ALTERNATIVE SOURCES OF REGULATION	182
A. <i>International Agreements</i>	182
B. <i>Self-Regulation</i>	182
VI. CONCLUSION	184

I. INTRODUCTION

On December 20, 1995, the CBS Evening News reported that the face of gambling is about to change.¹ Instead of bettors going to the casino, horse track, or local convenience store, the electronic superhighway is poised to bring the game to the bettors. Right now, it is possible to bet on sports² and buy lottery tickets³ via the Internet. Further, the proliferation of gambling sites on the World Wide Web⁴ (WWW) supports the prediction that personal computers will soon provide individuals with their own personal casino. As Americans

1. *Internet gambling could be difficult to stop as it's virtually undetectable* (CBS television broadcast, Dec. 20, 1995), available in WESTLAW, CBSEVNEWS database, 1995 WL 11278741.

2. See, e.g., International Casinos, available at <http://www.casino.org>; Sports International Ltd., available at <http://www.gamblernet.com/sports/main.html>; WagerNet, available at <http://www.vegas.com/wagemet/waghome.html>; World Wide Tele-Sports, available at <http://www.wwrs.com/rules.html>. Each of these organizations offer Internet bookmaking services.

3. See, e.g., InterLotto, available at <http://www.interlotto.li>.

4. The World Wide Web is the graphics link to the Internet. It provides a navigation tool for the user to access different sources of information.

continue to wager more and more money⁵—over \$500 billion in 1995 alone⁶—the Internet offers gambling entrepreneurs the potential for enormous profits.⁷ Yet, those searching for the Internet's pot of gold may never see the end of the rainbow if state and federal legislators have their say.

Traditionally, the states have regulated gambling. While some federal laws regulate gambling, the states determine what forms of gambling will be legal within their borders. State regulation makes logical sense when dealing with a lottery or a casino, since the establishment and regulation of those can be confined within a particular state's borders. The Internet, however, is not confined to a specific locality. In fact, the Internet is not confined to a state or a country. The Internet is global and any regulation of the Internet's contents must account for this very basic fact. Consequently, legislators addressing Internet gambling cannot rely on existing gambling laws. Rather, lawmakers must create a new regulatory scheme capable of dealing with the specific hazards of Internet gambling. If this cannot be done, then the legislators must exercise the wisdom to refrain from trying to regulate something they cannot control.

This Comment seeks to create a framework for a discussion about the problems associated with Internet gambling. Part II of this Comment surveys the gambling explosion which has occurred over the past three decades.⁸ In addition, Part II provides general information regarding gambling services currently available on the Internet.⁹ Part III of this Comment addresses the normative question of whether Internet gambling should be legal.¹⁰ Concluding that Internet gambling should not be legal, Part IV examines the current federal and state gambling laws and explains why these laws do not adequately address the unique concerns Internet gambling creates.¹¹ In Part V, two alternative approaches to creating new legislation are offered as partial solutions to the Internet gambling problem.¹² Finally, this Comment concludes

5. See Joseph P. Shapiro, *America's Gambling Fever*, U.S. NEWS & WORLD REP., Jan. 15, 1996, at 57 (noting that attendance at casinos exceeded the combined attendance at major league baseball games, professional football games, symphony concerts, and Broadway shows in 1994); see also William B. Falk, *The \$482B Jackpot: Gambling The New National Pastime*, NEWSDAY, Dec. 3, 1995, at A04 (noting that Americans spent more money on lotteries (\$34.4 billion) than on movies, plays, and recorded music).

6. Evan I. Schwartz, *Wanna Bet?*, WIRED, Oct. 1995, at 134 (citing INT'L GAMING & WAGERING BUS.).

7. See *id.* According to Jason Ader, an analyst at Smith Barney, gambling could become a \$10 billion a year industry in the United States if it was available at any time. *Id.* at 136; see also William M. Bulkeley, *Feeling Lucky? Electronics Is Bringing Gambling Into Homes, Restaurants and Planes*, WALL ST. J., Aug. 16, 1995, at A1, A7 (addressing the risks, temptations, and regulatory aspects of electronic gambling). Although it is uncertain what percentage of this market would be from Internet gambling, the potential is enormous considering how quickly the Internet is growing.

8. See *infra* notes 13-39 and accompanying text.

9. See *infra* notes 40-50 and accompanying text.

10. See *infra* notes 51-72 and accompanying text.

11. See *infra* notes 73-121 and accompanying text.

12. See *infra* notes 122-33 and accompanying text.

with the proposition that if the government—federal and state—cannot effectively regulate Internet gambling, then it should acknowledge its limitations and not create useless, broad blanket regulations.

II. AMERICA'S "NEW NATIONAL PASTIME"¹³ AND ITS "NEWEST FRONTIER"¹⁴

It almost goes without saying that gambling is ubiquitous. Anyone can watch the daily lottery drawing on television each night, go to a convenience store to buy a lottery ticket, or drive a couple of hours to a casino. This section briefly surveys the recent growth of gambling in the United States and then looks at gambling in its newest forum—the Internet.

A. *The Gambling Explosion*

According to I. Nelson Rose, an expert in the field of gambling from the Whittier College School of Law, gambling in the United States has followed a cyclical pattern.¹⁵ The first wave of gambling, which was characterized by prohibitions on gambling except for "worthy causes," began with the colonists and continued through the first two decades of the 19th century.¹⁶ After forty plus years of dormancy, the states legalized some forms of gambling following the Civil War to help fund the depressed southern economy.¹⁷ This second wave of gambling lasted until the turn of the century.¹⁸ The United States is currently in its third wave of gambling.¹⁹ This third wave of gambling, which began in the Great Depression, is characterized by the legal and social acceptance of gambling.²⁰

Although Nevada can be singled out as the forerunner because it reintroduced casino gambling in 1931,²¹ New Hampshire was the true catalyst of the gambling explosion. In 1964, New Hampshire reintroduced the state

13. See Falk, *supra* note 5, at A04 (statement of Robert Goodman, a professor of urban planning at Hampshire College) ("Gambling has become the new national pastime.")

14. Bulkeley, *supra* note 7, at A7 (quoting INT'L GAMING & WAGERING BUS.).

15. I. Nelson Rose, *Gambling and the Law-Update 1993*, 15 HASTINGS COMM. & ENT. L.J. 93, 95-97 (1993). I. Nelson Rose is regarded as one of the leading experts in the field of law and gambling. He has authored hundreds of scholarly works about gambling, including *GAMBLING AND THE LAW* (1986). For more information about the history of gambling, see Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 MISS. L.J. 291 (1995) (tracing the history of gambling back to medieval England); Paul D. Delva, Comment, *The Promises and Perils of Legalized Gambling for Local Governments: Who Decides How to Stack the Deck?*, 68 TEMP. L. REV. 847 (1995) (discussing the impact of legalized gambling on local governments and communities).

16. Rose, *supra* note 15, at 95 (noting that "[f]eelings against gambling games ran so strongly in the Massachusetts Bay Colony that the possession of cards, dice, or gaming tables, even in private homes, was outlawed") (citation omitted).

17. *Id.* at 96.

18. *Id.* at 97.

19. *Id.*

20. *Id.* (noting that the majority of states allow gambling in some form).

21. *Id.*

lottery²² and thirty-seven states have since followed its lead.²³ Using the lottery as a springboard, states and local communities have legalized various other forms of gambling. For example, casinos have proliferated throughout the United States. In the mid-1970s, New Jersey followed Nevada and became the second state to legalize casino gambling.²⁴ In the 1980s, the federal government passed the Indian Regulatory Gaming Act,²⁵ which brought casino gambling to many more states.²⁶ Recently, several states, such as Missouri,²⁷ Indiana,²⁸ and Illinois²⁹ have legalized riverboat casino gambling, while others are considering the idea.³⁰ In addition to these forms of casino gambling, states have also legalized other forms of gambling like horse racing, off-track betting, jai alai, and dog racing.³¹ All in all, gambling is now so pervasive that only two states, Hawaii and Utah, do not have some form of legalized gambling.³²

As gambling continues to expand, the question that needs to be answered is, "Why the popularity?" For the most part, the explanation is straight forward. First, more and more people are viewing gambling as a form of entertainment rather than a vice.³³ In fact, the states, which have traditionally discouraged gambling, are now encouraging their citizens to gamble. For example, the state of New York spent over \$41 million advertising its lottery.³⁴ Consequently, as gambling becomes socially acceptable, the public and private resistance to gambling diminishes. Second, gambling has proliferated because pro-gambling advocates promise increased jobs and revenues.³⁵ To community

22. Gary Vallen, *Gaming in the U.S.—A Ten-Year Comparison*, 34 CORNELL HOTEL & REST. ADMIN. Q. 51 (1993).

23. Falk, *supra* note 5, at A04.

24. N.J. CONST. art. 4, § 7, para. 2D.

25. 25 U.S.C. § 2710 (1994). In general, Indian reservations can conduct gambling operations if the state where they are located permits certain forms of gambling. *Id.* § 2710(b)(1).

26. Since the Act was passed, Indian tribes have established gambling operations in 24 states. *Indian Gaming: Many People Fear Problems Lurk Beneath Surface*, ASHEVILLE CITIZEN-TIMES, Apr. 6, 1996, at 7A.

27. MO. ANN. STAT. §§ 313.800 - .850 (Vernon 1994 & Supp. 1996).

28. IND. CODE ANN. § 4-33 (West Supp. 1995).

29. ILL. ANN. STAT. ch. 230, para. 10 (Smith-Hurd 1993 & Supp. 1996).

30. *See, e.g.*, Dale Dempsey & Susan Vinella, *Voters Reject Casinos*, DAYTON DAILY NEWS, Nov. 6, 1996, at A3 (noting that Ohio voters rejected a state constitutional amendment to allow riverboat gambling).

31. *See, e.g.*, FLA. STAT. ANN. §§ 550.01 - .70 (West 1988 & Supp. 1996) (legalizing several types of gambling, including horse racing, off-track betting, jai alai, and dog racing).

32. *See* Shapiro, *supra* note 5, at 57 (see graphics).

33. *See* Falk, *supra* note 5, at A04; *see also* Schwartz, *supra* note 6, at 190 (quoting Jason Ader ("Gambling is now part of the entertainment industry.")).

34. *See* Falk, *supra* note 5, at A04. Although New York spent the most money of any state, all states advertise their own lotteries. *Id.*

35. *See, e.g.*, Christopher Dinsmore, *Will Riverboat Gambling be a Boon or Bust for Virginia?*, THE VIRGINIAN-PILOT & THE LEDGER STAR, Jan. 8, 1996, at A6. Lotteries are slightly different than other forms of gambling. Instead of promising increased jobs, lotteries are usually sold as a means for raising revenues without increasing taxes. Furthermore, to increase the incentive to vote in favor of legalizing lotteries, many states claim that a portion of their lottery revenues will be used for beneficial purposes, such as education. *See* Todd Murphy, *Without Changes, Lottery Revenue Unlikely to Grow, Report Says*, THE COURIER J., Jan.

leaders facing economic hardship, the prospect of new jobs and additional money in their coffers is persuasive.³⁶ Without question, the volume of money that casinos generate is unbelievable.³⁷ For instance, in the first year in which Windsor, Canada, began operating casinos, it generated approximately \$400 million in revenues.³⁸

In sum, people want to gamble. The combination of increased tolerance and huge revenues is making it easier for local politicians to sell their residents on legalized gambling. As long as gambling revenues continually increase, politicians can continue promising an increase in jobs and revenues. Thus, for now, there does not appear to be any end to the gambling explosion.³⁹

B. Internet Gambling⁴⁰

Given the American public's voracious appetite for gambling, it was inevitable someone would try to bring gambling to the Internet. As the fastest growing community on the planet, Internet users provide a vast, and possibly untapped, market for gambling operators.⁴¹ Estimates of how large the Internet

26, 1996, at 01B.

36. One example is the Chicago suburb, Elgin, Illinois. Before it legalized riverboat gambling, Elgin was in "a financial crisis." John Carpenter, *Riverboat Cities Reap a Windfall*, CHI. SUN TIMES, Feb. 18, 1996, at 8 (quoting Elgin's mayor). Since legalizing gambling, Elgin has not had to borrow money to meet its payroll and has embarked on a street resurfacing program. *Id.* In addition to positive stories like Elgin, Illinois, the fact that gambling revenues eliminate the need for state imposed taxes helps to persuade legislators and the electorate to vote in favor of legalized gambling.

37. According to one study, the seventeen Indian reservation casinos in Wisconsin generated \$326.7 million in revenues for the state. James Sterngold, *Federal Study Would Weigh Costs of Gambling's Spread*, N.Y. TIMES, Nov. 24, 1995, at A1.

38. Anne Swardson, *More Nations Looking to Gambling as Way to Raise Revenue*, WASH. POST, Mar. 6, 1996, at A24. Windsor, Canada is located just across the river from Detroit, Michigan, and Americans account for about 80% of the visitors to Windsor's casino. *Id.*

39. There is reason to believe that the gambling explosion may be peaking. See Shapiro, *supra* note 5, at 53 (quoting a Bear, Sterns & Co. analyst) ("A backlash against gaming proliferation is the biggest risk to growth.") This backlash may begin with Congress, which has seen several bills introduced in the last year. One proposal, the Crime Prevention Act of 1995, would make Internet gambling illegal. See 141 CONG. REC. S19114 (1995). A second bill would create a National Commission to study gambling. Furthermore, several cities that have legalized gambling have not reaped the promised benefits. See Ken Armstrong, *Risky Business: Can Gaming Win in Cities?—Chicago May Get Tip from New Orleans*, CHI. TRIB., Nov. 29, 1995, at B1 (recognizing that New Orleans failed as a test market for major cities looking into the prospect of legalizing gambling). Yet, even though gambling may be beginning to face resistance in new markets, the amount wagered in 1995 was still more than the amount wagered in 1994. Compare Shapiro, *supra* note 5, at 53 (\$482 billion in 1994) with Schwartz, *supra* note 6, at 134 (\$550 billion in 1995). Therefore, for the purposes of this Comment, the assumption is that the growth trend will continue, even if it does so at a slower pace.

40. Although this article focuses on the WWW sites offering gambling services, many more sites offer gambling information. The number of gambling-related sites provides an indication of Internet users' interest in gambling. Because the number of sites constantly varies, it is never easy to determine with precision how many gambling-related sites exist, but estimates range between 200 to 400 sites. See Dennis Camire & Keith White, *Reality May Soon Catch Up Hype of Internet's Virtual Casinos*, GANNETT NEWS SERV., Mar. 2, 1996, available in LEXIS News library, Curmws file (citing Rolling Good Times Online magazine as the source of the 400 gambling related sites estimate).

41. No one is exactly sure how large the Internet community really is, but estimates range from thirty

gambling market could reach range from ten to thirty billion dollars a year.⁴² Going after a piece of that pie, several companies already offer gambling via the Internet.⁴³ In addition, many more companies are waiting for the federal government to decide how and if it will regulate Internet gambling before entering the market.⁴⁴

Originally, the only way for a gambler to wager real money was to use an Internet bookmaking service. Bookmaking operations come in two generic forms, which can be best explained by contrasting two servers, Sports International Limited and WagerNet. Sports International Limited is the typical bookmaker.⁴⁵ Bets are accepted at the specified odds and winners are paid out of the pool of money wagered. In contrast, WagerNet offers a matching service, which resembles a securities transaction.⁴⁶ Instead of collecting all of the bets itself, WagerNet pairs bettors who want opposite bets. For example, if Sean wanted to bet \$1,000 on the Indianapolis Colts and Damian wanted to bet \$1,000 on the Pittsburgh Steelers, WagerNet would have paired the two bets for the 1996 AFC championship game and taken \$25 as its fee.

Now, in addition to bookmaking, lotteries and casino gambling are being offered on the Internet. The small country of Liechtenstein began InterLotto, an international lottery promising a weekly payoff of at least \$1 million.⁴⁷ To buy a ticket, the user must send an encrypted message containing the player's application, credit card, and picks.⁴⁸ Similarly, the Coeur D'Alene Tribe of

to over fifty million users. See, e.g., George Cole, *Censorship in Cyberspace—George Cole Explores the Practicalities of Policing the World's Biggest Computer Network*, *FN. TIMES*, March 21, 1996, at 20. Experts estimate that the number of Internet users doubles annually. See Mike Snider, *Searching for Ways to Direct Internet Traffic*, *U.S.A. TODAY*, Mar. 14, 1996, at D1. Thus, "The Internet is larger, busier and more populous than any city on Earth." Electronic Frontier Australia Inc., *Consultation Paper on Regulation of On-line Information Services*, available at <http://www.efa.org.au/publish/reg.response.txt>.

42. See Schwartz, *supra* note 6, at 136. According to Jason Ader, an analyst at Smith Barney, on-line gambling could instantly add \$10 billion to the amount legally wagered. *Id.* Even more audacious is Sports International Limited, which estimates that on-line gambling will be a \$30 billion dollar a year industry. *Id.*

43. See *supra* notes 2-3.

44. One example is Virtual Vegas, available at <http://www.virtualvegas.com>.

45. See Sports International Limited., available at <http://www.gamblernet.com/sports/main.html>. Sports International Limited began operating as a telephone bookmaking service. Now, it offers both Internet and telephone services to its customers. For the Internet gambler, Sports International Limited requires a deposit into an account before any wagers are accepted. After the initial deposit, the gambler can wager with the money in the account and add to it when losing or collect by way of check or wire transfer upon winning.

46. A complete description about how to gamble using WagerNet is contained on its homepage. See WagerNet, available at <http://www.vegas.com/wagernet/waghome.html>. To increase security, WagerNet requires the user to purchase a card system that attaches to the user's computer. *Id.* The fee for the card system and the necessary software is about \$100. *Id.*; see also Schwartz, *supra* note 6, at 134.

47. Liechtenstein, a small country of thirty thousand people located between Austria and Switzerland, does not plan on retaining any of the revenues from InterLotto. *Liechtenstein-Based Lottery Rolls Out on Internet*, *REUTERS NEWS SERV.*, Oct. 3, 1995, reprinted in 141 *CONG. REC.* S17040 (1995). Instead, the revenues will finance prizes, operating expenses, and charities. *Id.*

48. See Todd Copilevitz, *Betting on the Net*, *DALLAS MORNING NEWS*, Oct. 22, 1995, at 1A.

Idaho is trying to create a national lottery in the United States.⁴⁹ For those who want Vegas-style casino gambling (blackjack, craps, etc.), the present selection is rather sparse; however, virtual casinos may be available by mid-1996.⁵⁰

As the Internet community continues to grow, more people will look to the Internet to find entertainment. Statistics indicate that Americans find gambling entertaining, and it will not be long before the Internet satisfies the public's appetite for gambling. Thus, even though Internet gambling has not exploded like other forms of gambling have, it represents gambling's "newest frontier."

III. SHOULD INTERNET GAMBLING BE LEGAL?

As Internet gambling approaches its growth stage, legislators must decide whether to ban Internet gambling. At the state level, the decision to legalize gambling usually depends on whether the perceived benefits outweigh the perceived costs. In other words, do the promises of increased jobs and tax revenues outweigh the social burdens that legalized gambling creates? With the Internet, however, balancing these factors is not enough in order to make a wise decision. Even if the burdens of Internet gambling are determined to outweigh the benefits, an additional question exists as to whether declaring Internet gambling illegal will solve the problems Internet gambling creates. The following discussion follows this two part analysis to determine whether Internet gambling should be legal.

A. *The Benefits and Burdens*

Finding the benefits associated with Internet gambling is difficult because few benefits exist.⁵¹ In fact, the proponents of Internet gambling usually do not

49. See Bulkeley, *supra* note 7, at A1. Whether a national lottery is legal depends on where the tickets are deemed to have been purchased. If the situs of the act is the Indian reservation, then the states, who clearly have a vested interest in protecting their own lotteries, will not have jurisdiction to stop the activity. *Id.*

50. A variety of gambling sites exist for playing blackjack and similar casino-style games. See Copilevitz, *supra*, note 48, at 1A. The majority, however, are not open for legal wagering. Instead, companies are using these as test sites to correct defects in the programs and as advertisements for future offerings. Additionally, most of the software designers would like to create virtual tables whereby one person can play at a table with others from different parts of the world. *Id.* This software is not completed as of yet, but its release is anticipated soon. *Id.*

51. When a state legalizes lotteries or a city legalizes riverboat casinos, the hope is that the revenues generated will translate directly into tangible benefits like new roads, new fire engines, or new schools. See Carpenter, *supra* note 36, at 8 (discussing the positive uses of gambling revenues). With Internet gambling, however, these benefits are not as forthcoming. First, gambling revenues represent the money people lose. Thus, money lost on Internet gambling is detrimental to the local economy because the money goes out of state or out of the country. Second, since current Internet gambling sites are operated in other countries, any jobs created and revenues earned through Internet gambling benefit these other countries. Finally, people who win money have an incentive to not pay any taxes because the IRS is currently incapable of tracking who is gambling on the Internet. In all fairness, however, Internet gambling is not completely without benefits.

promote Internet gambling as beneficial. Instead, supporters of Internet gambling highlight the public's desire to gamble and play up on the fact that other forms of gambling are presently legal. Then, almost as a foregone conclusion, Internet gambling proponents offer the Internet as the inevitable new forum for giving the public what it wants.⁵²

In contrast to its minimal benefits, Internet gambling not only has the same burdens associated with any form of gambling, but it creates several additional burdens. In general, the burdens associated with gambling of any kind are well documented.⁵³ Addiction,⁵⁴ diminished job performance,⁵⁵ crime,⁵⁶ decreased spending on other forms of entertainment,⁵⁷ and the

It does represent an initial commercial application of the Internet. Because of the amount of money that could be transferred across the Internet, operators have an incentive to develop secure money transfer methods. This fact is especially true given the seedy, dishonest, and criminal stereotypes associated with many forms of gambling.

52. One very powerful example of the position taken by Internet gambling operators can be found in Sports International Limited's 10-Q report (on file with the *University of Dayton School of Law*). In its Management's Discussion and Analysis section, the company states:

The proliferation of gambling continues throughout the United States and international jurisdictions. What was not socially acceptable sixty years ago is now considered entertainment, a leisure time activity, and is embraced by most legislators for the easy to collect tax dollar. Gaming has expanded from land based casinos to riverboat casinos, from lotteries to simulcast telephone betting on national horse racing, from charity bingo and "Nevada Nights" to Indian Reservation casinos, and from the paper slip of the bookmaker to a telephone call to Antigua. In a natural progression, the latest wave will bring casinos to the players, who generally like action and can get it on their personal computer (PC) at the office or home

Id. Thus, Internet gambling is the "natural progression" of the gambling explosion, or as was stated earlier, it is the "newest frontier." See Bulkeley, *supra* note 7, at A7. The encouragement to gamble at home or in the office, however, depicts one of the hazards of gambling, *e.g.*, lost work performance. See *infra* note 55 (explaining the hazards of gambling).

53. A thorough discussion of the harms gambling creates is beyond the scope of this Comment. For a very succinct overview of the problems associated with gambling, see CONG. REC. S19103 (July 31, 1995) (statement of Sen. Simon). In answering the question, "What are [gambling's] disadvantages?," Sen. Simon lists, among other things, lack of wealth creation, family problems, declining work productivity, and addiction. *Id.*

54. See Bulkeley, *supra* note 7, at A1. Howard Shaffer, director of the division on addictions at Harvard Medical School, stated, "Electronics as a vehicle of administration for gambling activities changes the experience to make it more dependence producing. As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced." *Id.* Additionally, Rachel Volberg, president of Gemini Research, an organization that studies problem gambling, states, "[W]e know from research [that young, affluent males] are probably most likely to develop difficulties related to gambling." William M. Bulkeley, *New On-Line Casinos May Thwart U.S. Laws*, WALL ST. J., May 10, 1995, at A1. Because this group is the same one that is most likely to use the Internet, Ms. Volberg expressed great concern about Internet gambling. *Id.*

55. When workers become addicted to gambling, their work performance usually suffers. Additionally, employers can suffer from a lack of work performance even when the workers are not addicted if the employees gamble during work hours. See *The National Impact of Casino Gambling Proliferation: Hearings Before the Committee on Small Business of the House of Representatives*, 103d Cong., 2nd Sess. 65-66 (1994) [hereinafter *Hearings*] (testimony of Robert Goodman, Lervelson Professor of Environmental Design, Hampshire College, Amherst, Massachusetts).

56. Gambling and crime are related in two distinct ways. First, gamblers themselves may engage in criminal activities. *Hearings*, *supra* note 55, at 46 (testimony of Honorable Jeffrey L. Bloomberg, Attorney for Lawrence County, South Dakota). Sometimes these activities consist of theft to pay for gambling debts,

regressive nature of gambling⁵⁸ each pose serious problems for society. In addition to these problems, Internet gambling encounters difficulties associated with unsecured money transactions, unregulated operations, a detached environment, and usage by underage players.⁵⁹

1. Unsecured Money Transactions

For most gamblers, there is a certain amount of apprehension whenever a bet is placed because there is always the chance of losing. With the Internet, an additional source of apprehension arises because the Internet is not a secure medium for financial transactions.⁶⁰ If a gambler places a bet with a credit card, there is a very real possibility that a computer hacker could acquire the card numbers.⁶¹ Moreover, even if the gambler has a standing account, which is required by nearly all of the bookmaking services available, the account numbers are just as much at risk as the credit card numbers.

2. Unregulated Operations

The problem of money security on the Internet is magnified because there is no way for a gaming commission to police the activities of the on-line services.⁶² Unlike Las Vegas or Atlantic City, where regulators can monitor payoffs by merely policing the casinos, Internet gambling does not lend itself

while other times the manifestations are in criminal activities like domestic abuse. *Id.* at 46-48. Second, legalized gambling is often accompanied by illegal gambling. *Id.* at 46-47.

57. One of the problems with gambling is that money spent on gambling can not be spent on other forms of entertainment. Consequently, one argument made against gambling is that if people are going to spend money on entertainment, they should spend it on those activities which do not create problems like addiction.

58. Gambling is regressive in nature because it usually attracts the lower income level people. *Hearings, supra* note 55, at 78 (statement of John Warren Kindt, Professor, University of Illinois at Urbana-Champaign). To understand why gambling is regressive, imagine two people who each spend five hundred dollars a year to gamble. If the first person makes \$100,000 a year, the wagers represent only one-half of one percent of the yearly income. If the second person earns \$10,000 a year, the wagers represent five percent of the yearly income. Since it is the second person who needs the money to survive, gambling harms those closest to the poverty level the most. *See id.*

59. The reason the Internet creates additional problems is best summarized by Frank Fahrenkopf, the president of the gambling industry's lobby, the American Gaming Association. Mr. Fahrenkopf said, "Casino gaming is highly regulated and monitored in this country. The Internet is not." Phil Roura, *Internet Gambling: Officials Say It's a Sure Bet Teens Will Be Snared in Web Site*, N.Y. DAILY NEWS, Jan. 7, 1996, at 31.

60. See Ilene Knable Gotts and Rebecca R. Fry, *Security Breaches Can Occur When Credit Card Numbers are Transmitted Over the Internet*, NAT'L L.J., Mar. 25, 1996, at C9 ("A healthy dose of doubt and caution are warranted before embarking on a cyberspace shopping [or gambling] spree.").

61. See John Markoff, *Software Security Flaw Puts Shoppers on Internet at Risk*, N.Y. TIMES, Sept. 19, 1995, at A1 (discussing how two first-year graduate students at the University of California at Berkeley discovered how to break into Netscape Communications Corporation's security system; although Netscape said the program would be fixed, the thought of criminals discovering how to break into the security system "threaten[s] to cast a chill over the emerging market for electronic commerce").

62. Bulkeley, *supra* note 7, at A7 (referring to this situation as the "credibility problem").

to similar types of monitoring. Some operators of on-line services have offered to produce their algorithms for inspection.⁶³ Other operators have argued that impropriety will be cured by the market.⁶⁴ Nevertheless, the potential for an operator to devise a scheme to defraud the unobservant participant exists and the likelihood of being caught is less on the Internet.

3. A Detached Environment

Another problem is that Internet gambling disassociates the player from reality. In a casino, for example, the chips are a tangible representation of how much money the gambler has won or lost. As the pile of chips grows or shrinks, gamblers are constantly reminded that they are winning or losing *their own money*. On the Internet, there is no similar sensation because there is no tangible representation of money.⁶⁵ Consequently, the Internet lacks a disincentive that curbs gambling beyond one's means.

4. Underage Gambling

Even though money security and fraudulent tactics are problematic, many feel that underage gambling presents the biggest problem for Internet gambling.⁶⁶ In a society which views gambling as entertainment, there is little dispute that it is adult entertainment. Yet, even though minors cannot legally gamble, studies indicate a large number of them do gamble.⁶⁷ In fact, Tom

63. John Byczkowski, *Online: Caribbean Casino Coming to the Internet*, CINCINNATI ENQUIRER, Mar. 21, 1995, at B6.

64. *Id.* The argument is made that gamblers will only place their bets with those services with a reputation for being honest. *Id.* If an operator achieves a dishonest reputation or its service pays off at a lower percentage rate, gamblers will play elsewhere. *Id.* Although the market theory is persuasive, it does not solve the problem of unregulated operation since it does not prevent collusion. If the industry fixes its payoffs, an Internet gambler will not be able to influence the market by choosing to gamble with the "more honest" operators.

65. For a highly unprofessional, unscientific but very enlightening story of how easy it is to lose large sums of money gambling on the computer, see Richard Roeper, *Computer Bettors Can Be Virtually Sure of Losing*, CHI. SUN TIMES, Dec. 12, 1995, at 2. In his article, Roeper discusses his three day blackjack experiment on his Windows 95 game. *Id.* Over the course of the three days, he went from over \$11,000 "up" to over \$11,000 "down" before losing about \$1,700. *Id.*

66. See Burden of Proof (CNN television broadcast, Jan. 1, 1996), available in LEXIS, News library, Cumws file (statement of Frank Fahrenkopf, President of the American Gaming Association) ("There is no way we are going to keep [teenagers] from it, and I think that is why the gaming industry in this country is very concerned over . . . the spread of Internet gaming right now, without that regulatory control."); see also David Holmstrom, *Casino Gambling Surges in United States. Tempting More Teenagers*, CHRISTIAN SCI. MONITOR, Feb. 17, 1994, reprinted in 141 CONG. REC. S16757-02 (1995).

67. A variety of statistics support the conclusion that minors gamble. One article claims studies indicate nearly seven million teenagers gamble on a regular basis. Charles Watson, *Teens Laying Their Futures on the Line: Addictive Habit: Few Adolescents Are Aware That They Can Become Hooked on Gambling*, ATLANTA J. & CONST., Feb. 25, 1996, available in LEXIS, News library, Cumws file. Furthermore, recent statistics published by the Council on Compulsive Gambling of New Jersey Inc. showed students to be the

Cummings, the director of the Massachusetts Council on Compulsive Gambling, reported that thirty-two percent of non-gambling high school students felt abnormal due to the tremendous peer pressure associated with gambling.⁶⁸ Since children are more likely to have problems with gambling,⁶⁹ Internet gambling exacerbates the problem for two reasons. First, as one commentator has stated, “[W]idely dispersed electronic betting machines . . . tempt teenagers already fond of video games.”⁷⁰ Second, because children often know more about computers than their parents, children are capable of circumventing their parents’ control.⁷¹

In conclusion, when the common problems gambling creates are combined with Internet gambling’s unique problems, the burdens of Internet gambling substantially outweigh the benefits. Yet, if this is not enough to convince someone that Internet gambling should not be legal, one final point should be determinative. In all situations where gambling is legal, the benefits closely match the burdens. For example, when Illinois receives tax revenues from a riverboat casino, it can earmark a portion of the money to address the problems gambling creates.⁷² With Internet gambling, however, if Illinois outlaws Internet gambling, the state will be forced to absorb the costs of Internet gambling while the revenues go to another state or country. Hence, not only do the burdens outweigh the benefits of Internet gambling, but the burdens are disassociated from the benefits. Thus, Internet gambling should not be legal.

IV. REGULATING INTERNET GAMBLING

Given the detrimental effects of Internet gambling, it appears that Congress should simply enact a statute that criminalizes Internet gambling and on-line gambling services. In fact, a bill recently introduced in Congress would do exactly that.⁷³ The problem with such a law, however, is that it fails to

third highest occupational category to call in for help. *1995 Statistics for 1-800-GAMBLER Helpline Released by Council on Compulsive Gambling*, BUS. WIRE, Mar. 21, 1996, available in LEXIS, News library, Cumwvs file. Finally, in 1992 over 300,000 teenagers were either denied admission or kicked out of Atlantic City casinos. Holmstrom, *supra* note 66, at 2.

68. Holmstrom, *supra* note 66, at 2.

69. Children do not understand gambling can be addictive according to Durand Jacobs, vice president of the National Council on Problem Gambling and a professor of psychiatry at Loma Linda University School of Medicine. See Watson, *supra* note 67.

70. Bulkeley, *supra* note 7, at A1.

71. Although many of the gambling services require a credit card or an account to wager and teenagers presumably do not have either, the ability to use a parent’s credit card or account still exists. Besides the problem of teenagers using their parents accounts, there is the problem of teenagers having enough money to establish their own accounts. Without any standard mechanism for determining the age of a gambler, the Internet gambling service providers cannot effectively stop minors from gambling.

72. See *supra* notes 53-59 and accompanying text.

73. See 141 CONG. REC. S19114 (1995) (explaining that the bill, the Crime Prevention Act of 1995, would criminalize Internet gambling by the user if it was already illegal to gamble in the state).

understand the medium which it attempts to regulate. As a result, the law does not adequately address the problems Internet gambling creates. In order to construct a regulatory system that properly confronts the problems of Internet gambling, legislators must understand the Internet itself. Once the legislators understand the Internet, they will then realize the limits of their regulation. The following section reviews the origins and growth of the Internet, analyzes the inadequacies of current state and federal laws, and concludes that a blanket ban will not solve the problems of Internet gambling.

A. An Explanation of the Internet

The Internet originated during the cold war.⁷⁴ At that time, military leaders and researchers recognized the necessity of creating an uninterrupted channel of communication that could survive an actual war.⁷⁵ In its initial form, the network linked four computers at four universities across the country.⁷⁶ Since then, the Internet has expanded dramatically.⁷⁷ Today, the Internet is not one network but a collection of networks,⁷⁸ which allows for uninterrupted communication.⁷⁹ Information is sent across the Internet in data packets with an affixed destination address. A specified address, instead of a specified pathway, allows the data packets to navigate around broken portions of the network⁸⁰ to reach their Internet destination.

74. Peter H. Lewis, *Limiting a Medium Without Boundaries: How Do You Let the Good Fish Through the Net While Blocking the Bad?*, N.Y. TIMES, Jan. 15, 1996, at D1.

75. *Id.*

76. Steven Baker, *The Evolving Internet Backbone*, UNIX REV., Sept. 1993, at 15. The four original members of the Internet were the University of California Los Angeles, the University of California Santa Barbara, Stanford Research Institute, and the University of Utah.

77. See Mike Snider, *Searching for Ways to Direct Internet Traffic*, USA TODAY, Mar. 14, 1996, at D1 (noting that the Internet now has 20-30 million users and that the number of users doubles annually).

78. Understanding the intricacies of the Internet is not essential for the purposes of this Comment. The "collection of networks" concept is important, however, because it explains the difficulty that one country would have in trying to regulate an international medium. When multiple networks are connected together, the ability for one nation to regulate its portion of the network is hampered by the ease of connecting to another network. In reality, this problem exists in a variety of circumstances. For example, when a state decides to raise the legal drinking age, underage drinkers will go to a neighboring state that has not raised its drinking age. Because there is no effective means of stopping this type of behavior, the state with the higher drinking age has to live with the consequences of an uncooperative neighbor who will not raise its drinking age. Although the Internet is not a perfect analogy, it does suffer from the same problem because simply regulating one of the collected networks does not bring the rest of the networks in line.

79. By standardizing the protocols, which is analogous to the language spoken by different computers, information can travel to and from almost any computer. Such electronic transmissions can be illustrated as telephone calls. Just because someone chooses AT&T as her long distance carrier does not mean she cannot talk to someone who uses Sprint or MCI. The same concept holds true for the Internet because one computer on one network can talk to another computer on another network.

80. When the Internet was created, its creators believed that the network might have a broken portion because a bomb destroyed some of the wires. Today the "broken portion" of the network is the portion that is regulated.

For our nation's regulators, the Internet's structure has several ramifications. First, and most importantly, regulation of the Internet is not possible through laws governing just the United States.⁸¹ Many other countries have created their own networks which are accessible by a simple phone call. Thus, even though a large portion of a network may be located within one country, an Internet user is not confined to the territorial borders of that country.

A second consequence of the Internet's structure is that it induces regulators to focus regulation on the Internet access providers (IAPs). IAPs are the Internet user's link to the Internet.⁸² Since a user must go through the IAPs to gain access to the Internet, many regulators believe that imposing restriction upon the IAPs will solve the problems Internet gambling creates.⁸³ The difficulty with regulating the IAPs, however, is that IAPs are often not the originators of the information they transmit.⁸⁴ Consequently, if regulators prohibit IAPs from providing users access to Internet gambling, the IAPs would be forced to screen every WWW site to determine which sites should be blocked. With the tremendous amount of information that flows across the Internet, forcing an IAP to screen all of the information would create an unreasonable burden, if not an impossible task, for the IAP.⁸⁵ Thus, an IAP faced with the choice of either risking statutory penalties or screening every WWW site might rationally decide the burden is not cost effective and shut down its service.⁸⁶ With harmful, offensive, and illegal information represent

81. See, e.g., Lewis, *supra* note 74, at D4. If the United States believes it can eliminate Internet gambling through regulation, it fails to understand the basic premise of the Internet structure. According to Anthony M. Rutkowski, the former head of Internet Society, an international association of Internet access companies, "[t]he nature of the Internet, if not contemporary telecommunications and transportation technologies in general, make [restricting information access into a particular jurisdiction] intrinsically impossible to achieve." *Id.* Therefore, any regulation must proceed from an initial position that accounts for the global nature of the Internet.

82. Internet access providers (IAPs) provide the only mechanism for controlling data flow because they are the only points through which some information must flow. For example, if a University of Dayton student could only access the Internet through the school itself, the University could control the student's access to information. The problem for the University is that many students use commercial services, such as America On-Line or CompuServe, to access the Internet. Since there are multiple points of entry, controlling one IAP does not solve the numerous problems.

83. Internet gambling is just one context where IAP regulation arises. Internet pornography (the so-called "cyberporn") is the context where these types of regulatory ideas were first created.

84. See, e.g., Hiawatha Bray, *Porn Curb Escapable: Users Can Elude Censorship Effort*, BOSTON GLOBE, Dec. 30, 1995, at 29. A recent example may prove useful for illustrating this point. German officials recently declared some of the information contained in different news groups to be in violation of its pornography laws. Because CompuServe, who was not the originator of the information, could not control which customers had access to the news groups, it had to shut down *all* of the offending news groups to avoid criminal sanctions. *Id.*; Karen Kaplan, *Government Censorship of Internet Futile. Experts Say*, L.A. TIMES, Dec. 30, 1995, at D1 (stating the structure of the Internet was designed to defeat blockage in the event of a nuclear attack and thus the ability to circumvent "blocks" will defeat censorship on the Internet).

85. See Cole, *supra* note 41, at 20.

86. See Andrew Blum, *Internet Copyright Ruling: Judge Says Access Provider can be Liable for Infringement—Both Sides Pleased*, NAT'L L.J., Dec. 11, 1995, at A6 (statement of Martin Garbus, attorney for Prodigy Services Co.) ("If you force online companies to defend cases and can't get rid of [the lawsuits],

ing a small portion of what is available on the Internet, regulators need to avoid this strategy.⁸⁷

Finally, government regulation of the Internet must contend with its anarchic design.⁸⁸ The Internet's design facilitates freedom of communication by allowing information to navigate around broken portions of the network. Since regulation blocks are essentially the same as a broken portion of the network, the Internet will circumvent regulation localized to one country.

B. Inadequate State and Federal Laws

Because of the Internet's structure, virtually no way exists to stop people from accessing a gambling site once it is on the Internet. This puts government officials in a difficult position: either they can punish the gamblers or they can punish the organizations that operate the service. Yet, both options are fatally flawed. First, law enforcement officers do not have an effective and efficient method for determining who is gambling on the Internet.⁸⁹ Second, since all of these gambling services are currently operated in foreign countries, extradition is the only method for trying the violators in a United States court, and this is an unlikely scenario.

Even though these impediments to government regulation exist, both state and federal officials have declared Internet gambling illegal. To support their positions, officials have relied upon various gambling statutes, all of which were enacted before Internet gambling was created.⁹⁰ Since these older statutes are directed at the gamblers and the providers, the same flaws outlined above apply to these regulations.⁹¹ The remainder of this section examines the different state and federal regulatory schemes used to police gambling and notes the deficiencies of each approach.

you are going to bankrupt them.”).

87. This position is taken by the Electronic Frontier of Australia in its response paper. See *supra* note 41. Although the use of the Internet in Australia is not as prevalent as it is in the United States, similar concerns should be expressed in the United States.

88. See Ed Krol, *THE WHOLE INTERNET USER'S GUIDE & CATALOG* 16 (Mike Loukides, ed., 2d ed. 1994). Although the Internet's design may permit anarchy, the reality is that some regulation does occur. *Id.* This regulation, however, is only as effective as the participants who voluntarily comply. *Id.*

89. If the Internet gambler does not publicize his gambling, then there is little chance a state can catch the gambler without tapping into the phone lines. The legality of such searches is beyond the scope of this Comment.

90. See, e.g., CAL. PENAL CODE § 337a(1) (West 1988) (declaring pool selling or bookmaking illegal); MINN. STAT. ANN. § 609.76(1) (West Supp. 1996) (declaring the maintenance or operation of a gambling place illegal); OHIO REV. CODE § 2915.02(A)(1) (Anderson 1993) (same). For example, bookmaking is the most prevalent form of Internet gambling and many states have laws criminalizing bookmaking. Yet, even with these laws in effect, the states still must find a way to enforce the laws.

91. See *supra* note 89 and accompanying text.

1. Minnesota: An Example of the State Approach⁹²

Like most states, Minnesota's wagering statutes define the boundaries of legal gambling.⁹³ Unlike most states, however, Minnesota has aggressively attacked Internet gambling. In addition to filing suit against WagerNet and its founder, Kerry Rogers,⁹⁴ the Minnesota Attorney General's Office has posted a statement on its homepage that declares Internet gambling to be a violation of Minnesota criminal law.⁹⁵ The declaration applies Minnesota's criminal jurisdiction statute⁹⁶ to operators outside of the state who supply illegal gambling services which thereby cause an illegal "result" in the state.⁹⁷ Since unauthorized lotteries⁹⁸ and sports bookmaking⁹⁹ are illegal activities in Minnesota, Internet gambling operators are subject to Minnesota's criminal

92. See *State v. Granite Gate Resorts, Inc.*, available at <http://www.state.mn.us/ebranch/ag/ggcom.txt>. Very little information is available regarding how states will regulate Internet gambling. Minnesota is used as an example because it is not only the most vocal, but also because it is only one of three states that has articulated a position on this issue.

Texas has also articulated its position on Internet gambling. The Texas Attorney General's opinion stated that it was illegal for two people to wager on a card game played across the Internet. See *Op. Tx. Att'y Gen.*, available in 1995 WL 318587. This opinion stated the following:

Where two or more persons, each using a separate personal computer and modem or other data transmission device in a private place, play a card game with each other and bet on the outcome of the card game, the activities would be illegal under the gambling provisions [under Texas law] unless there was no 'public' access to the games, no one benefited other than by personal winnings, and the risk of winning or losing was the same for all participants. A third party's operation of a bulletin board service, by means of which he [or she] knowingly assisted persons in playing and betting on card games located on that bulletin board service and charged for the services used by the person playing the game, would violate one or more of [Texas' penal laws].

Id.

Finally, the Missouri Attorney General has stated that he will prosecute any Internet gamblers, but as of yet none have been prosecuted. Stu Durando, *Internet Betting Raises Questions: Legal Challenges Keep One Computer Service Off-line for Big Game*, ST. LOUIS POST-DISPATCH, Jan. 14, 1996, at 8A.

93. See MINN. STAT. ANN. § 349.11-40 (West 1990 & Supp. 1996) (lawful gambling and gambling devices); *id.* § 349A.01-.15 (West 1990 & Supp. 1996) (state lottery); *id.* § 609.75-762 (West 1987 & Supp. 1996) (gambling).

94. *State v. Granite Gate Resorts, Inc.*, available at <http://www.state.mn.us/ebranch/ag/ggcom.txt>. Although the suit against WagerNet represents Minnesota's aggressive approach to disrupting the spread of Internet gambling, this action does not represent a valid technique for addressing the problems Internet gambling creates. Minnesota's suit is based on a consumer fraud theory. *Id.* According to the Attorney General's complaint, WagerNet advertises itself as a "legal way to bet on sporting events" and Kerry Rogers, the creator of WagerNet, has publicly claimed WagerNet is a legal form of gambling. *Id.* This suit may deter some operators from providing services in the short run, but the reality is that this theory of liability does not cover those operators who exercise some discretion and do not advertise themselves as a legal form of gambling in the United States.

95. See Minn. Att'y Gen., *Warning to All Internet Users & Providers*, available at <http://www.state.mn.us/ebranch/ag/memo.txt>.

96. MINN. STAT. ANN. § 609.025 (West 1987).

97. *Id.*

98. Although MINN. STAT. ANN. § 609.761(2) (West Supp. 1996) allows for a state lottery as defined in § 349A, § 609.755(2) (West Supp. 1996) still prohibits unauthorized sales or transfers of lottery tickets. Thus, it is likely that the sale of lottery tickets over the Internet in Minnesota is illegal.

99. According to MINN. STAT. ANN. § 609.755(1), it is illegal to make a bet as defined in § 609.755(2). Since bookmaking falls within the definition of betting and § 609.755(1) declares betting illegal, bookmaking is also illegal.

laws.¹⁰⁰ Additionally, the Minnesota statement declares that IAPs would be liable under an accomplice liability theory.¹⁰¹ Finally, users themselves would be subject to criminal liability under Minnesota's current statutes which make placing bets an illegal activity.¹⁰²

The problem with the Minnesota approach is twofold. First, it fails to recognize the limited effect one state can have on regulating the Internet.¹⁰³ As was previously mentioned, the Internet is a global network. If one portion of the Internet is regulated, information will simply flow around that portion. Or, as John Gilmore has said, "The Internet interprets censorship as damage and routes around it."¹⁰⁴ Because a single state cannot prevent Internet gambling from existing, the best that can be hoped for is that many states will also criminalize the activity. Yet, in the end, all it takes is one state to legalize the activity and Internet gambling will be available.¹⁰⁵

The second problem with the Minnesota approach is that it attempts to regulate a party which it should not regulate. Under the accomplice liability theory, IAPs would be subject to criminal sanctions. Yet, IAPs are similar to telephone common carriers. IAPs transmit the material; they do not create it. Given the vast amount of information which is passed along the Internet everyday, forcing an IAP to screen gambling material (assuming it could be done at all) to avoid liability creates an unreasonable burden. Additionally, imposing liability upon the IAPs could cause the IAPs to not provide their service, which then denies the majority of law abiding citizens the opportunity

100. It is worthwhile to examine whether the Attorney General's statement is simply a scare tactic or whether it is meant to be enforced. See Minn. Att'y Gen., *supra* note 95. Under the rationale outlined in its statement, WagerNet and Kerry Rogers should be subject to Minnesota's criminal gambling laws. *Id.* Yet, in its suit, the Minnesota Attorney General advanced a consumer fraud theory. *State v. Granite Gate Resorts, Inc.*, available at <http://www.state.mn.us/ebranch/ag/ggcom.txt>. If Minnesota truly believed it could subject Internet gambling operators to its laws, why would it not also allege criminal charges against WagerNet and Kerry Rogers? One explanation might be that the Attorney General does not have any proof that a Minnesota resident has actually gambled via the Internet, thus it cannot meet its own jurisdictional statute requiring an illegal result to be caused within the state. See MINN. STAT. ANN § 487.18(a). If that is true, then how is the Attorney General going to prove any Minnesota residents have been defrauded? These questions are indicative of the problems states will have trying to regulate Internet gambling.

101. The gist of this argument is that the Minnesota accomplice liability statute makes it illegal for anyone to aid another in committing a crime in Minnesota. MINN. STAT. ANN. § 609.05 (West 1987). Since Internet access providers are the means of connecting users to operators, the Minnesota Attorney General believes it would have jurisdiction over the Internet access providers and could subject them to state criminal liability. See Minn. Att'y Gen., *supra* note 95.

102. Under the Minnesota statutes, placing an illegal bet is a misdemeanor and the punishment involves forfeiture of gambling devices, which the Minnesota Attorney General interprets as including the computer equipment used to make and place bets. See Minn. Att'y Gen., *supra* note 95.

103. Lewis, *supra* note 74, at D1 ("Trying to keep certain types of information from entering a jurisdiction is as difficult as keeping certain kinds of molecules from entering a country's air space, or certain kinds of fish from swimming in its waters."). This problem haunts state and federal regulators. Even though a state can declare Internet gambling illegal, it cannot prevent Internet gambling from existing. Yet, once gambling exists, Internet users will find it, and they will gamble.

104. *Id.* (quoting John Gilmore, an engineer credited with coining this phrase).

105. See *infra* notes 120-21 and accompanying text.

to access the Internet's beneficial information.

In conclusion, the states can have a role in regulating Internet gambling. State laws which criminalize Internet gambling may deter some users. Also, state criminal laws might cause some companies who are willing to provide Internet gambling to delay offering their products until the legality of the issue is resolved. Nevertheless, the states' role is limited, thus calling the federal government to action.¹⁰⁶

2. Federal Law¹⁰⁷

The United States Constitution gives Congress the power to regulate all interstate and foreign commerce.¹⁰⁸ Pursuant to that delegated authority, Congress enacted The Communications Act of 1934, which created the Federal Communication Commission (FCC) and gave it jurisdiction over all interstate and foreign wire communications.¹⁰⁹ Thus, not only does the federal government have the constitutionally delegated authority to address Internet gambling, it also has an established agency specializing in this area. Yet, to date, no federal law expressly declares Internet gambling illegal.¹¹⁰ Instead,

106. Nonetheless, states may prefer to resolve the problem at the state level since Congress is often slow. Also, in those states where gambling is already legal, there is a vested interest in keeping revenues within the state. Since Internet gambling threatens to take revenues away from the established gaming services, the states may want a more active role in regulating Internet gambling.

107. For an excellent overview of the coverage of federal law in the area of Internet gambling, see AMERICAN GAMING ASSOC., SUMMARY OF FEDERAL LAWS AND REGULATIONS AFFECTING THE USE OF THE INTERNET FOR GAMING (1995) (on file with the *University of Dayton Law Review*). Even though the American Gaming Association represents the gaming industry, the report can be read as an unbiased restatement of the law because the American Gaming Association's President has publicly stated that his organization does not endorse Internet gambling at this time. See Burden of Proof, *supra* note 66. Citing to the problems of monetary security and teenage addiction, Fahrenkopf's position is to wait until these problems are resolved before legalizing Internet gambling. *Id.* Consequently, this report was not written as a one-sided position paper to influence the legalization of Internet gambling.

108. U.S. CONST. art. I, § 8, cl. 4.

109. See 47 U.S.C. § 151 (1994).

110. Senator Jon Kyl (R-AZ), sponsor of the Crime Prevention Act of 1995, has recently introduced legislation that would make Internet gambling illegal. S. 1495, 104th Cong., 1st Sess. (1995). The proposed bill would amend the Federal Wire Statute, 18 U.S.C. § 1084(a) (1995) so that it would cover "wire and electronic communication." S. 1495. Thus, Internet gambling operators could not avoid regulation by using wireless communication. Additionally, the bill eliminates the phrase "on any sporting event or contest" from § 1084. See S. 1495. Consequently, the amended version of § 1084 quells any dispute over the breadth of coverage of the current § 1084. Finally, an additional paragraph would be added to § 1084(a) that eliminates the requirement that the party be in the business of gambling. S. 1495. Thus, the implication is that the casual bettor would be subjected to regulation. Even though S. 1495 alleviates some of the problems associated with § 1084(a), it still has its shortcomings. For instance, S. 1495 does not address the foreign Internet gambling operators, which means these services will continue to exist outside of the United States. This shortcoming caused Stanton McCandlish, spokesman for the Electronic Frontier Foundation, to state, "These regulations are doomed. . . . It has to do with failure to fully understand the technology. There's no practical way to put restraints and controls of this sort on what people are doing." David Hoyer, *Kyl Seeks to Stop Online Wagering: Home PC Owners Target of Measure*, ARI. REPUBLIC, Dec. 22, 1995, at A1. Moreover, the United States still does not have jurisdiction over Internet gambling operators who operate in foreign countries.

federal officials currently rely on existing laws, which never contemplated an Internet, as support for their contention that Internet gambling is illegal.¹¹¹

It is illegal for someone “in the business of betting or wagering” to use wire communications to transmit bets or betting information “on any sporting event or contest.”¹¹² Because Internet gambling depends on interstate wires to transmit bets, many people believe section 1084 provides the legal justification for declaring Internet gambling to be illegal. The applicability of section 1084, however, is rather limited because it does not cover the casual bettor.¹¹³ According to the text of the statute, only someone “in the business of betting or wagering” is subject to penalties.¹¹⁴ Just as a consumer of groceries is not “in the business” of selling durable goods, the plain meaning of the statute would not cover the casual bettor. Furthermore, the House Report accompanying section 1084 indicates that the legislation addressed the use of modern communications by bookmakers.¹¹⁵ Although some statements indicate that the statute should cover the social gambler, the purpose of the statute was to cover professional gambling operations.¹¹⁶ Thus, section 1084 is deficient because

111. Although the focus in this section is on 18 U.S.C. § 1084, other federal statutes could apply to Internet gambling. For example, 18 U.S.C. § 1955 (1994) makes it illegal to run an “illegal gambling business.” An “illegal gambling business” is any business that (1) violates state law, (2) involves at least five people, and (3) has operated for thirty days or grossed over \$2,000 in one day. § 1955(b)(1)(i)-(iii). Like § 1084, § 1955 does not cover the individual gambler; however, § 1955 is not limited to “any sporting event or contest” as is § 1084. *See* § 1955(2) (defining gambling to include bookmaking and a variety of other gambling activities such as slots and lotteries). Furthermore, a violation of § 1955 does not require the use of interstate wires as does § 1084. Although § 1955 provides an alternate method for criminalizing Internet gambling operations, it still suffers from the enforcement dilemma that haunts § 1084—that is, how to stop operators who run their businesses in foreign countries. Another federal statute that could apply to Internet gambling is the Racketeer Influenced and Corrupt Organizations (RICO) Act. 18 U.S.C. § 1961(1) (1994). Under RICO, a “racketeering activity” includes a violation of § 1084. *Id.* Although not all Internet gambling activities are covered by § 1084, gambling operators would be considered in the business of gambling. *See infra* notes 113-16 and accompanying text. Thus, those gambling operators convicted of violating § 1084 could be forced to forfeit any property “derived . . . directly or indirectly, from racketeering activity . . .” 18 U.S.C. § 1963(a)(3) (1994).

112. 18 U.S.C. § 1084(a) (1994). Subsection (b) creates an exception allowing for the transmission of gambling information from a state where gambling is legal into another state where it is legal. *Id.* § 1084(b). This exception permits off-track betting.

113. *See* *United States v. Scavo*, 593 F.2d 837, 843 (8th Cir. 1979) (upholding a jury instruction excluding a “mere bettor or customer” from the coverage of § 1084); *United States v. Barborian*, 528 F. Supp. 324, 328-29 (D. R.I. 1981) (finding a bettor who averaged bets between \$800 to \$1,000 a day, three to four days a week, not within the coverage of § 1084).

114. 18 U.S.C. § 1084(c).

115. *See* H.R. Rep. No. 967, 87th Cong., 1st Sess. 2 (1961), *reprinted in* 1961 U.S.C.C.A.N. 2631, 2631-32 (stating that “modern bookmaking depends in large measure on the rapid transmission of gambling information by wire communication facilities”).

116. The Senate Report explains the concern that a bookmaker could claim that he was making a social bet and, therefore, escape the coverage of the statute. *Barborian*, 528 F. Supp. at 327 (quoting S. Rep. No. 588, 87th Cong., 1st Sess. (1961)). Yet, this concern was prefaced with this statement: “Law enforcement is not interested in the casual dissemination of information with respect to . . . sporting events *between acquaintances*. That is not the purpose of this legislation.” *Id.* (quoting S. Rep. No. 588, 87th Cong., 1st Sess. (1961)) (emphasis added). In addition, Representative Cellar stated, “This bill only gets after the bookmaker, the gambler who makes it his business to take bets or to lay off bets. . . . It does not go after the

it does not cover individual Internet gamblers.¹¹⁷

Even if section 1084 could be applied to the casual bettor, another issue remains. Section 1084(a) makes it illegal to transmit bets on "any sporting event or contest."¹¹⁸ By its plain meaning, section 1084(a) does not cover casino-style gambling, and its legislative history would suggest that section 1084(a) was not intended to cover anything more than bookmaking activities.¹¹⁹ Currently, with bookmaking constituting the bulk of the gambling on the Internet, this issue is relatively insignificant. Once casino-style software is perfected, however, this limitation becomes a much greater concern. Because section 1084 only covers bookmakers, it can only have a limited effect on Internet gambling.

Even if federal law could address the individual gambler, it would still suffer from the same deficiency that state regulation faces—namely, the United States is only one part of the global network. So, just as Minnesota's ability to restrict the amount of accessible gambling sites on the Internet is severely limited when Wisconsin permits Internet gambling, the United States cannot stop Internet gambling if Canada decides to legalize it.¹²⁰ Furthermore, with modern telecommunications, Japan is effectively as close to the United States as Canada. Hence, banning Internet gambling within the United States, which currently represents a relatively large portion of the Internet, will not stop Americans from being able to gamble on the Internet.¹²¹ The only conclusion,

casual gambler who bets \$2 on a race. That type of transaction is not within the purview of the statute." *Id.* at 328 (quoting 107 CONG. REC. 16534 (1961)).

117. Additionally, if operators continually set up shop in foreign countries, the United States does not have jurisdiction over the operators. Consequently, § 1084 fails to effectively regulate both the Internet gambler and the operator.

118. 18 U.S.C. § 1084(a).

119. Section 1084 criminalizes the use of interstate wires in gambling activities. Before Internet gambling, however, casino style gambling (blackjack, roulette, craps, etc.) were not activities that could be conducted over the phone. Consequently, when Congress used the language "any sporting event or contest," there is no reason to believe Congress contemplated the use of interstate wires for casino-style gambling. See H.R. Rep. No. 967, 87th Cong., 1st Sess. 5 (1961), reprinted in 1961 U.S.C.C.A.N. 2631.

120. See Anthony M. Keats & Jeffrey K. Joyner, *Laws Against IP Piracy May Stop Some Purveyors of Porn*, NAT'L L.J., Mar. 25, 1996, at C1. Using a similar analogy, the authors state. "U.S.-Canada cooperation, however, will not resolve legal issues when an information provider on the island of Antigua posts a pornographic infringement on the Web that a computer in the United States downloads and forwards to China." *Id.* The point is simply that one country cannot regulate the Internet.

121. A qualifying statement is needed. Currently, the United States, with its affluence, education, and technology, is a leader in the use of the Internet. Yet, the problem with Internet gambling cannot be solved by sheer size alone. All it takes is one small nation to legalize Internet gambling for it to be available on the Internet. Unfortunately for Internet gambling opponents, this has finally occurred. The government of Monte Carlo, a city which has a reputation for gambling, has approved of Internet gambling. See *Venturetech Taps Into Casino World and Monacall's Joint Venture; Internet Gaming Via Monte Carlo, Monaco*, FIN. WORLD, Mar. 25, 1996, Corporate Newswire, at 95. Furthermore, a British bookmaker, SSP International Sports Betting Limited, is taking bets from Japanese citizens who are prohibited from making certain bets within their country. See *SPP International Sports, London Seeks to Feed the Vice of Gambling-Addicted Japan Via the Internet*, COMPUTERGRAM INT'L, Jan. 11, 1996, No. 2827; Richard Lloyd Parry, *British Bookies Take Sumo Into Cyberspace*, THE INDEPENDENT, Mar. 22, 1996, at 1. Given these two situations, it is apparent that simply banning Internet gambling in the United States is really no better than banning Internet gambling

therefore, is that something else is needed.

V. ALTERNATIVE SOURCES OF REGULATION

By this time it should be apparent that criminalizing Internet gambling within the United States will not eliminate this form of gambling. Instead, it merely forces gambling operations to establish their services in foreign countries that allow Internet gambling.¹²² Consequently, alternative forms of regulation are needed to address the problems which Internet gambling creates. This Comment offers two alternatives: one is to create international agreements that harmonize the law regarding the Internet, and the second is to encourage self-regulation.

A. International Agreements

No international agreements currently exist to regulate any facet of the Internet¹²³ and the absence of such agreements has generated some problems between sovereign nations with different jurisprudential ideologies. For example, CompuServe, an American company, recently shut down 200 bulletin boards after German officials declared certain matter to be illegal under German pornography and indecency laws.¹²⁴ Although CompuServe eventually reopened the bulletin boards, the episode demonstrates the effects of a lacking uniform Internet policy among the different countries. In essence, one nation's politics censored the rest of the world—at least for two weeks.

Internet gambling creates the same problems as those that led to the CompuServe debacle. Some countries embrace Internet gambling. For example, at the same time Justice Department officials are claiming Internet gambling is illegal in the United States,¹²⁵ the Monaco government is endorsing Internet gambling in Monte Carlo.¹²⁶ Unless there is some uniform policy against gambling among the different countries, there will always be gambling sites on the Internet. Thus, the United States must endeavor to establish an international policy regarding gambling on the Internet.¹²⁷

in just one state.

122. See *supra* notes 120-21 and accompanying text.

123. Keats & Joyner, *supra* note 120, at C1 (explaining how no international treaties exist governing the Internet even though two years ago Vice President Gore called for cooperation to establish a "global information infrastructure").

124. See *supra* note 84.

125. See Bulkeley, *supra* note 7, at A7.

126. See *supra* note 121.

127. See Keats & Joyner, *supra* note 120, at C1 (stating "[m]ultilateral cooperation among the Internet countries is needed to ensure that one jurisdiction's laws do not stifle the use of the Internet in other countries").

The effectiveness of international agreements is directly proportional to the number of countries that commit to enforcing a standard policy and the number of users each country has. As more of the larger, industrialized countries participate in international agreements, the more Internet users will be regulated. On the whole, this would be an improvement, but the danger still lurks that one country could make Internet gambling legal. Until this possibility can be eliminated, other methods for regulating Internet gamblers must be used.

B. Self-Regulation

If government regulation cannot stop Internet gambling, then the burden is going to fall on individuals to control their own behavior. Indeed, technology may assist parents, educators, and employers in limiting the detrimental effects that gambling has on children, students, and employees. Currently, two different types of programs, filters and ratings, are available to block access to certain sites. If used effectively, both can help to curb the harmful effects associated with Internet gambling.

Filtering programs "typically work by comparing a user's request for information against a list of prohibited sites."¹²⁸ A parent, educator, or employer can purchase a variety of filtering programs¹²⁹ depending on the level of supervision needed. For example, some filtering programs allow the parent to add or to delete from the list of blocked sources.¹³⁰ Other programs restrict

128. Lewis, *supra* note 74, at D1.

129. At least a half a dozen filtering programs are already available, and more are expected. For a good overview of available filtering programs and some of their characteristics, see Sara Curtis, *Policing Cyberspace*, MACCLEAN'S, Feb. 19, 1996, at 56; Ellie Rodgers, *A Guide to Internet Filters for the Internet*, THE IDAHO STATESMAN, Mar. 4, 1996, at 2D.

130. "Net Nanny" allows parents to add to or delete from the list of proscribed sites while "CYBERSitter" only allows parents to add to the list. Curtis, *supra* note 129, at 56. The ability to add or delete sites is a useful function for those parents familiar with the Internet. For those parents who are not as familiar with the Internet, most filtering programs provide updated lists to their users. *Id.* Furthermore, these updated lists are normally compiled by teams of interested parties who constantly review the material offered on the Internet. See *Newview Offers Free Internet Screening Service to U.S. Schools; Most Advanced Filtering Solution and Largest Database of Rated Sites*, PR NEWSWIRE, Mar. 8, 1996, Fin. News Section.

As useful as filtering programs are, they have two drawbacks. One drawback relates to the amount of information available on the Internet. Because so much information traverses the Internet each day, patrolling the Internet is almost impossible. "[N]ew . . . sites are created every day, so even with frequent upgrades the software is always at least partly out of date. Also, content within a site can change at any time, compromising the reliability of any rating system, and a skilled and determined teen-age programmer can generally find his or her way to any filtered site." Lewis, *supra* note 74, at D1. Just as IAPs should not be held liable for not being able to screen all of the information going through their link, filtering programs cannot be expected to catch all of the new information that someone would like to have blocked. A second drawback flows from the first. If an organization such as an IAP cannot screen all of the objectionable material, then it is impossible for an individual to do the same. Consequently, individuals will be forced to purchase updated lists to continually block access to unwanted sites. This leaves the consumer at the mercy of the filtering company because it is the company who will dictate which sites are blocked.

Even though there are drawbacks, filtering programs could still be very useful for people who want to block access to Internet gambling sites. Because gambling is a specified topic, the ability to screen new

access during specified hours of the day.¹³¹ Still other programs create a log of all of the proscribed sites which someone has tried to access.¹³²

In addition to filtering programs, the Platform for Internet Content Selection (PICS) is trying to develop the technology to support an Internet rating system. "A ratings tool would be encoded into the browser software used to gain access to Internet data sites Parents could choose a browser endorsed by the Christian Coalition, for example, or by the local school board" ¹³³ The beauty of this system is it allows individuals to select their own level of censorship while not imposing any one group's beliefs upon another.

Although the self-regulation techniques do not stop the addict from gambling, they do provide an initial means of protection for people who are concerned about others' gambling habits. For parents who do not want their children to gamble, the filtering programs provide a mechanism for preventing the behavior. Furthermore, children will not be able to do at school what is not allowed at home if the schools have the filtering programs. Finally, filters provide employers a means of curbing the non-work related activities of their employees.

VI. CONCLUSION

Internet gambling represents the newest frontier of the United States' current gambling explosion. As Internet gambling becomes more and more prevalent, legislators at both the state and federal level are seeking to regulate its usage. Even though valid reasons exist for limiting its harmful effects, practical considerations defeat creating a blanket ban of Internet gambling. Regulations must be enforceable and the nature of the Internet renders isolated United States' laws unenforceable to a large extent. Consequently, legislators must acknowledge the limited effect their laws will have on Internet gambling. Instead of throwing themselves into a losing battle, legislators should work with foreign governments to establish a uniform policy regarding gambling on

sites relating to gambling becomes much easier. Furthermore, because of its specificity, those parents, educators, or employers who do not want their computers to access gambling sites can purchase programs which sell their service as blocking Internet gambling.

131. One program that does this is "Cyber Patrol." Curtis, *supra* note 129, at 56. For parents who work, this would allow them to block access while children are in school, but then at home the parents could supervise the child's usage. In addition to blocking access during specified hours, Cyber Patrol also can limit the amount of time spent on-line per day or week. *Id.* Although this function does not keep people from gambling, it would provide an option for limiting the harmful effects of gambling. If the time spent gambling is limited, the ability to lose extraordinary amounts of money would also be limited. In some respects, this is much the same as limiting the number of hours that an individual can gamble on a riverboat.

132. The "Internet Filter" is one example of a filtering program that also maintains a log of all sites which someone has attempted to access. *Id.* In addition to the log, the Internet Filter can also send an e-mail message to another computer, for example the parent's computer at work, identifying that someone has attempted to access a proscribed site. *Id.*

133. See Lewis, *supra* note 74, at D1.

the Internet. In addition, legislators should facilitate self-regulation by encouraging new filtering products in the market. These techniques will minimize the harmful effects associated with Internet gambling and they provide a workable solution.

Scott M. Montpas