

# INTERNET GAMBLING: ON A ROLL?

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## I. Introduction

Internet gambling is defined as “the placing of real money bets using one’s personal computer via the Internet.”<sup>1</sup> Although revenues collected through online gambling sites represent only a fraction of total gambling revenues, its growth potential is enormous.<sup>2</sup>

The gambling industry has enjoyed phenomenal growth over the past quarter of a century.<sup>3</sup> In 1976, the Commission on the Review of the National Policy Toward Gambling reported that only thirteen states had lotteries and only one state, Nevada, had casinos.<sup>4</sup> By 1998, thirty-seven states had lotteries, and every state except Utah, Hawaii, and Tennessee had some form of legal wagering.<sup>5</sup> Presently, Hawaii and Utah remain the only states that prohibit any form of gambling activities.<sup>6</sup>

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<sup>1</sup> Valerie Jepson, *Internet Gambling and the Canadian Conundrum*, 6 *APPEAL* 6 (2000).

<sup>2</sup> See JANINE S. HILLER & RONNIE COHEN, *INTERNET LAW & POLICY* 160 (2002).

<sup>3</sup> See *National Gambling Impact Study Commission, Final Report* (1999), at <http://govinfo.library.unt.edu/ngisc/reports/finrpt.html> (last visited June 5, 2004) [hereinafter *NGISC*].

<sup>4</sup> See Rachael A. Volberg, Marianna T. Toce & Dean R. Gerstein, *From Back Room to Living Room: Changing Attitudes Toward Gambling*, *PUBLIC PERSPECTIVE*, Aug./Sept. 1999, at 8., available at, <http://www.ropercenter.uconn.edu/pubper/pdf/pp105b.pdf> (last visited Mar. 19, 2004) (discussing the history of the public attitude toward gambling in the United States).

<sup>5</sup> See *NGISC*, supra note 3, at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html> (last visited Mar. 19, 2004).

<sup>6</sup> See Timothy Boone, *Could Casinos Open in Florida, Hawaii?*, *SUN HERALD* (Biloxi, Miss.), Nov. 17, 2002, at D3; *Hawai, Utah Alone in Gambling Ban*, *HAWAIINEWS.COM*, June 11, 2003, at <http://www.hawaiinews.com/archives/politics/00160.shtml> (last visited

The advent of the Internet has produced entrepreneurial opportunities for online gambling operators. On August 18, 1995, the world's first virtual online casino, Internet Casinos, Inc., opened for business.<sup>7</sup> Today, there are an estimated 1,200 to 2,000 online gambling sites,<sup>8</sup> all of which are apparently based in foreign jurisdictions that authorize Internet gambling.<sup>9</sup> Analysts project that online gambling will become a multi-billion dollar industry within a few years.<sup>10</sup> Online casinos have become so popular that Internet stock market gambling sites have surfaced, allowing bets on whether the Dow Jones Industrial average will exceed a specific number.<sup>11</sup>

Nevertheless, Internet gambling has certainly not avoided criticism. Public policymakers and citizens voice concern that the online gambling industry fails to protect consumers.<sup>12</sup> Further, many believe that Internet gambling activities are associated with organized crime,<sup>13</sup> increases in local crimes,<sup>14</sup> increases in personal bankruptcies,<sup>15</sup>

Mar. 31, 2004).

<sup>7</sup> See Cynthia Janower, *Gambling on the Internet*, 2 J. COMPUTER-MEDIATED COMMUNICATIONS, at 2 (1996), available at, <http://www.ascusc.org/jcmc/vol2/issue2/janower.html> (last visited Mar. 19, 2004).

<sup>8</sup> See generally Andy Holloway, *Gambling Man*, CANADIAN BUSINESS, May 28, 2001, at 19-20; see also *Hearing on the Financial Aspects of Internet Gambling: Good Gamble or Bad Bet?: Hearing Before the House Comm. on Oversight & Investigations*, 107th Cong. (2001) (statement of Rep. Sue Kelly, Chairwoman, Subcomm. on Oversight & Investigations), available at <http://financialservices.house.gov/media/pdf/071201ke.pdf> (last visited Mar. 19, 2004) [hereinafter *Kelly statement*]; *Casino City Launches Online.CasinoCity.com with Real-Time Popularity Rankings*, PRNEWswire, available at, <http://www.prnewswire.com/cgi-in/stories.pl?ACCT=104&STORY=/www/story/06-15-2004/0002193501&EDATE=> (last visited July 7, 2004).

<sup>9</sup> See generally Dominick Addison, *Gambling Internet Sites with Huge Increase in At-Home Visits*, MARKETING, Mar. 22, 2001, at 12; see also *Kelly statement*, *supra* note 8.

<sup>10</sup> See Anthony N. Cabot & Louis V. Csoka, *Internet Gambling in 2002 and Beyond*, CYBERSPACE LAWYER, Oct. 2002 at 2; Mark Ishman, *Computer Crimes and the Respondeat Superior Doctrine: Employees Beware*, 6 B.U. J. SCI. & TECH. L. 6, § 64 (2000).

<sup>11</sup> See Timothy J. Mullaney, *A 12,000 Dow? Ladies and Gents, Place Your Bets*, BUSINESS WEEK, Aug. 2, 1999, at 88C; Marcia Vickers & Robert McNatt, *E-Gambling on the Dow? Shocking!*, BUSINESS WEEK, Oct. 4, 1999, at 6.

<sup>12</sup> See Theresa E. Loscalzo & Stephen J. Shapiro, *Internet Gambling Policy: Prohibition Versus Regulation*, 7 VILL. SPORTS & ENT. L.J. 11, 19-21 (2000) (discussing various problems and needs for protecting the online public, including vulnerable users).

<sup>13</sup> See generally Henry Beck, *Online Gambling and Funds Transfers; Funds Transfer Laws Help Overcome Thorny Jurisdictional Issues*, N.Y. L.J., Sept. 2, 2003, at 5.

<sup>14</sup> See generally Beau Thompson, *Internet Gambling*, 2 N.C. J.L. & TECH. 81, 84 (2001); 8 *Security Lessons from Recent Rulings, Research & Mishaps*, SECURITY DIRECTOR'S REPORT, Mar. 2004, at 7. See *Lawyer Challenges Anniversary Fees, Springfield Attorney Gets Probation, Report Faults System for Trudeau's Death*, 5 W. MASS. L. TRIB.,

and off-income from local businesses.<sup>16</sup> Regulators argue that anyone with a computer and modem will have unlimited access to online gambling sites, thus youths and compulsive gamblers are likely to be vulnerable to such addictive behaviors.<sup>17</sup>

The Internet creates an environment that permits consumers to participate in gambling activities without the need to physically go to a casino.<sup>18</sup> Over 4.5 million Americans have gambled online at least once.<sup>19</sup> The reach of online gambling sites is expected to increase as the number of online users continues to grow throughout the world.<sup>20</sup> Despite efforts by the United States Congress to ban Internet gambling, an estimated fifty to ninety percent of online gamblers reside in the United States.<sup>21</sup>

There are significant challenges facing federal online gambling prohibitions laws, including the counter efforts of state governments,<sup>22</sup> which seek to legalize online gambling,<sup>23</sup> and other economic and social

Mar. 2004, at 3.

<sup>15</sup> See generally Jennifer Porter Gore, *Legislature Agenda—Internet Gambling & Payday Lending*, CREDIT UNION MAGAZINE, Mar. 2000, at 6.

<sup>16</sup> See generally Ryan D. Hammer, *Does Internet Gambling Strengthen the U.S. Economy? Don't Bet on It*, 54 FED. COMM. L.J. 103, 117-18, 121-22 (2001).

<sup>17</sup> See generally *Compulsive Gambling*, at <http://www.mayoclinic.com/invoke.cfm?objectid=74AD9859-7FCC-46D0-851BEB27EE5CC91B> (last visited Mar. 19, 2004) (defining compulsive gambling).

<sup>18</sup> See Stevie A. Kish, *Betting on the Net: An Analysis of the Government's Role in Addressing Internet Gambling*, 51 FED. COMM. L.J. 449, 452 (1999) (discussing a brief historical overview of the development of Internet gambling).

<sup>19</sup> See Hammer, *supra* note 16, at 106.

<sup>20</sup> See generally *id.*

<sup>21</sup> See Debra Baker, *Betting On Cyberspace: When It Comes to the Future of Internet Gambling, All Wagers Are Off*, 85 A.B.A. J. 54 (1999); Cabot & Csoka, *supra* note 10.

<sup>22</sup> NEV. REV. STAT. 463.750 (2004). In Mar. 2001, Nevada became the first state to pass legislation legalizing Internet gambling. See Richard Stenger, *Nevada Gambles on Internet Gambling*, CNN.COM, available at <http://www.cnn.com/2001/TECH/internet/06/05/online.gaming> (last visited August 1, 2004). The Nevada statute allows the Nevada Gaming Commission and Gaming Board Control to regulate Internet casinos as long as minors and citizens of states that prohibit online gambling are prevented from participating. *Id.*

<sup>23</sup> See generally JEFFERY R. RODEFER, INTERNET GAMBLING IN NEVADA: OVERVIEW OF FEDERAL LAW AFFECTING ASSEMBLY BILL 466, NEVADA ATTORNEY GENERAL'S OFFICE (addressing Assembly Bill 466, which legalized Internet gambling in Nevada and the requirement that such Internet gambling activity still must pass federal muster) at [http://ag.state.nv.us/hottopics/int\\_gamb\\_nv.pdf](http://ag.state.nv.us/hottopics/int_gamb_nv.pdf) (last visited Mar. 19, 2004); see Nancy Kilson, et al., *Update on Internet Gambling Legislation*, CYBERSPACE LAWYER, Nov. 2002, at 18.

stumbling blocks.<sup>24</sup> However, it appears that Nevada wants to position its casinos as frontrunners in legalized online gambling.<sup>25</sup> Instead of spending revenues to prevent online gambling, Nevada hopes to benefit from the tax revenue generated from legitimate online gambling.<sup>26</sup>

There are a number of stakeholders in Internet gambling, including offshore operators, domestic operators, state and local governments, and other collateral business interests which both affect and are affected by Internet gambling.<sup>27</sup> These interests sometimes diverge and sometimes converge.<sup>28</sup>

The purpose of this article is to explore the legal and public policy issues on the federal level related to online gambling. It addresses both the potential prohibition and regulation of the industry based on a reasoned approach to a synthesis of these competing stakeholder interests. The authors briefly trace various federal statutes, both existing and proposed legislation, used in determining the legality or illegality of online gambling. The authors then discuss the various stakeholders affected by such laws. Next, the authors present and analyze the arguments of the proponents and opponents of efforts to regulate Internet gambling. This article concludes that because of the jurisdictional problem that impedes the government's ability to control Internet gambling, the government should develop policy incentives to induce multinational business entities to enter the Internet gambling market.

The analysis of the article uses an interdisciplinary approach to highlight the interdependence of the law and the environment in which the law is set. This paper shows how marketing discipline can be used to create a more legally manageable environment when the law alone would fail. Using a marketing model, the U.S. government can more easily acquire jurisdiction over these multinational business entities, and then use the behavior of the multinationals to influence the behavior of the smaller Internet gambling operators.

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<sup>24</sup> See generally Hammer, *supra* note 16, at 107-12.

<sup>25</sup> See generally Jeff Burbank, *Our Online Gamble: Nevada Must Get into High-tech Gear Now or Lose the Cyber-casino Race*, at [http://www.lvlife.com/2001/10/company\\_town.html](http://www.lvlife.com/2001/10/company_town.html) (last visited June 10, 2004).

<sup>26</sup> *Id.*

<sup>27</sup> See generally Jonathan Gottfried, *The Federal Framework for Internet Gambling*, 10 RICH. L. J. & TECH. 26 (2004).

<sup>28</sup> See *infra* Part III.

## II. *The Setting*

### A. *Historical Foundation for Internet Gambling Laws*

Online gambling is a complicated issue in the United States. Traditionally, states have regulated gambling activities without federal intervention except in three categories: constitutional provisions regarding Indian gaming, disputes between states, and issues regarding organized crime.<sup>29</sup> Both public policymakers and the American public have generally supported a variety of gambling activities including state sponsored lotteries, horse racing, and casinos.<sup>30</sup> Research surveys suggest that the American public perceives the benefits derived from gambling to be greater than the costs.<sup>31</sup> The perception is that gambling revenues provide additional tax monies for local and state governments to help support education, roads, and create jobs.<sup>32</sup> However, unlike traditional forms of gambling activities, online gambling has failed to gain the support of the general public.<sup>33</sup>

The borderless, interstate, and international nature of the Internet, which creates immense jurisdictional problems, further complicates the online gambling debate.<sup>34</sup> Because of this jurisdictional quagmire, proponents argue that enforcing online gambling laws is a difficult and expensive task.<sup>35</sup>

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<sup>29</sup> See generally James Frey, *Socioeconomic Impacts and Public Policy: Federal Involvement in U.S. Gaming Regulation*, 556 ANNALS 138 (1998) (discussing the need for regulation of Internet gambling from a socioeconomic perspective).

<sup>30</sup> See Lori K. Miller & Cathryn L. Claussen, *Online Sports Gambling – Regulation or Prohibition*, 11 J. LEGAL ASPECTS OF SPORT 99-100 (2001) (discussing the public acceptance of various forms of gambling).

<sup>31</sup> See *id.* at 100 (discussing the phenomenal growth in the gambling industry).

<sup>32</sup> See Frey, *supra* note 29, at 139.

<sup>33</sup> See generally Teresa M. McAleavy, *Online Gambling: Regulate or Ban?*, BETBAY.COM, Sept. 1, 2002, at <http://www.betbay.com/mainstory.php?id=3> (last visited Mar. 31, 2004).

<sup>34</sup> See Kish, *supra* note 18, at 462.

<sup>35</sup> See David H. Lantzer, *Internet Gaming Tax Regulation: Can Old Laws Learn New Tricks*, 5 CHAP. L. REV. 281, 282-84 (2002) (discussing the advantages of locating Internet gambling operations offshore); Ray August, *International Cyber-Jurisdiction: A Comparative Analysis*, 39 AM. BUS. L.J. 531 (2002) (discussing online international jurisdiction problems); Michael A. Geist, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345, 1349-53 (2001) (discussing the alarm set off by France's assertion of jurisdiction over the American company Yahoo.com, and the United States' assertion of jurisdiction over a Canadian company in the iCraveTV case).

Two of the earliest pieces of legislation to prohibit betting over telephone lines are the Interstate Wire Act (“Wire Act”)<sup>36</sup> and the Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act (“Travel Act”).<sup>37</sup> The Wire Act prohibits gambling operations from receiving illegal sports bets over interstate and international wires,<sup>38</sup> and has been specifically applied to Internet gambling where the Internet transmission is conducted over telephone lines.<sup>39</sup> However, the use of wireless Internet connections in gambling activities by offshore Internet gambling operators led to two interpretive issues with the Wire Act.

First, some commentators say that the Wire Act fails to cover wireless Internet transmissions.<sup>40</sup> Arguably, the language of the Wire Act requiring “a wire communication facility for the transmission in interstate or foreign commerce”<sup>41</sup> or “information assisting in the

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<sup>36</sup> 18 U.S.C. § 1084(a) (2003). The statute states:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

*Id.*

<sup>37</sup> 18 U.S.C. § 1952(a) (2003). The statute reads:

Whoever travel in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to (1) distribute the proceeds of any unlawful activity; or (2) commit a crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than five years or both.

*Id.*

<sup>38</sup> See Rodefer, *supra* note 23; Burbank, *supra* note 25.

<sup>39</sup> See *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001) (where an offshore Internet gambling operator was convicted of violating the Wire Act because he used the telephone lines and other wire communications to facilitate the taking of bets over the Internet).

<sup>40</sup> See Beau Thompson, *supra* note 14, at 91-92 (arguing that the Wire Act’s express statutory language excludes applicability to wireless transactions); *but see* Bruce Keller, *The Game’s the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 YALE L.J. 1569, 1582-83 (1999) (arguing that there are no completely wireless Internet transactions and that, nevertheless, the language of the Wire Act is broad enough to cover wireless transactions).

<sup>41</sup> 18 U.S.C. § 1084(a) (2003).

placing of bets or wagers”<sup>42</sup> is broad enough to cover even wireless Internet transmissions.<sup>43</sup> Somewhere in every Internet communication a wire communication facility is used.<sup>44</sup> However, the opposing view is that the express statutory language of the Wire Act regarding “wire communication[s]”<sup>45</sup> means that it covers only wire communications, such that the wireless communications technologies like satellite Internet connections, would not be affected.<sup>46</sup> Therefore it is questionable whether the Wire Act would apply to a bet made over a cell phone.<sup>47</sup> This issue has yet to be decided in a federal court.

Secondly, the Wire Act has been interpreted to affect only bets or wagers on sporting events.<sup>48</sup> In *Mastercard*, credit card debtors sued several international credit card companies alleging that the credit card companies had violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”)<sup>49</sup> by facilitating the debtors gambling on the Internet through credit card transactions.<sup>50</sup> However, the court held that the Wire Act covered only sports-related debts.<sup>51</sup>

The Travel Act is more problematic for the Internet gambling operator. As early as 1962, a federal district court in *United States v. Smith* applied the criminal prohibitions of the Travel Act to gambling activities.<sup>52</sup> Later in 1976, the Tenth Circuit Court of Appeals in *United States v. Villano*,<sup>53</sup> also applied the criminal prohibitions of the Travel Act to gambling activities.<sup>54</sup> Moreover, while wire communications are not explicitly stated in the law, the courts have held that the Travel Act applies to wire communications.<sup>55</sup> In *Smith*, the court held that the

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<sup>42</sup> *Id.*

<sup>43</sup> See Keller, *supra* note 40, at 1580-84.

<sup>44</sup> *Id.* at 1582.

<sup>45</sup> 18 U.S.C. § 1084(a).

<sup>46</sup> See Thompson, *supra* note 14, at 91.

<sup>47</sup> See *id.*

<sup>48</sup> See *In re Mastercard Int'l Inc. Internet Gambling Litig.*, 313 F.3d 257, 262-63 (5th Cir. 2002) (holding that the Wire Act applied only to betting on sporting events); but see Keller, *supra* note 45, at 1583 (arguing why the Wire Act should apply to Internet non-sports gambling).

<sup>49</sup> 18 U.S.C. § 1961-1968 (1970).

<sup>50</sup> *Mastercard*, 313 F.3d at 259.

<sup>51</sup> See *Mastercard*, 313 F.3d at 262-63.

<sup>52</sup> 209 F. Supp. 907 (E.D. Ill. 1962).

<sup>53</sup> 529 F.2d 1046 (10th Cir. 1976).

<sup>54</sup> *Smith*, 209 F. Supp. at 915-16; *Villano*, 529 F.2d at 1049-56.

<sup>55</sup> See generally Joel Michael Schwarz, *The Internet Gambling Fallacy Craps Out*, 14



Travel Act covered telephone transmissions, citing Congress's legislative intent when enacting the law.<sup>56</sup> Then, in *Villano*, the Tenth Circuit Court of Appeals held that the Travel Act covered telephone transmissions despite the fact that the defendant did not originate the transmissions, but rather received them.<sup>57</sup> The *Villano* court, like the *Smith* court, referred to the legislative intent that specifically included the language, "any facility for transportation in interstate or foreign commerce, including the mail," to find that telephone activity similar to the Wire Act would be covered.<sup>58</sup> Furthermore, the Travel Act seems to apply to all types of gambling activities and is, therefore, not limited to sports-related betting.<sup>59</sup> However, the Travel Act may have the same applicability concern as the Wire Act with regard to wireless communications.<sup>60</sup> The ambiguity in these laws prompted Congress to introduce new legislation dealing with the issue of Internet gambling.

### B. Recent Legislative Efforts to Regulate Internet Gambling

To extend the applicability of the Wire Act to online gamblers, Sen. John Kyl (R-AZ) introduced the Internet Gambling Prohibition Act of 1997 ("IGPA") to amend the Wire Act to specifically prohibit the use of the "Internet or any other interactive computer service" in the placing of bets or in operating a business which places bets.<sup>61</sup> The IGPA was designed to extend the Wire Act to: (1) the Internet, (2) all types of gambling, (3) individual bettors, and (4) gambling businesses.<sup>62</sup> The IGPA passed the Senate, but failed in the House of Representatives.<sup>63</sup> In 1999, Sen. Kyl reintroduced the IGPA, but unlike the 1997 bill that would have created a complete ban on Internet gambling, the 1999 bill made exceptions for state lotteries, horse racing and fantasy sports

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BERKELEY TECH. L.J. 1021, 1029 (1999) (discussing the logistics of Internet gambling and the government's attempts to control it).

<sup>56</sup> *Smith*, 219 F. Supp. at 915-16.

<sup>57</sup> *Villano*, 529 F.2d at 1046.

<sup>58</sup> *See id.* at 1052 n.6; *United States v. Archer*, 486 F.2d 670 (2d Cir. 1973) (finding the Travel Act applicable to foreign telephone transmissions).

<sup>59</sup> *See* Michael J. Thompson, *Give Me \$25 on Red and Derek Jeter for \$26: Do Fantasy Sports Leagues Constitute Gambling?*, 8 SPORTS L.J. 21, 31-32 (2001).

<sup>60</sup> *Cf.* Thompson, *supra* note 14, at 92.

<sup>61</sup> S. 474, 105th Cong. § 3 (1997).

<sup>62</sup> *Id.*

<sup>63</sup> *See generally* Mark D. Schopper, Comment, *Internet Gambling, Electronic Cash & Money Laundering: The Consequences of a Monetary Control Scheme*, 5 CHAP. L. REV. 303, 307 (2002).

operations.<sup>64</sup> Although the IGPA unanimously passed in the United States Senate, it was once again defeated in the House of Representatives.<sup>65</sup>

A key objection to the bill was its definition of a “gambling business.”<sup>66</sup> The IGPA prohibited any person engaged in a gambling business to knowingly “use the Internet or any other interactive computer service to place, receive, or otherwise place a bet or wager.”<sup>67</sup> The intent of the bill was to encompass both online bettors and gambling establishments and would, in fact, apply to any individual who wins more than \$2,000 in any one day.<sup>68</sup> There was also objection to criminalization of individual betters.<sup>69</sup> Another source of criticism was that the bill appeared to yield to the heavy political hand of the gambling industry by allowing pari-mutual betting online (such as horse racing), with no appreciable benefit for the public.<sup>70</sup> However, this exemption for horse racing may have been necessary to press the anti-Internet gambling movement forward.<sup>71</sup>

Even if the IGPA had passed, there would have been a major stumbling block: enforcement. In order to stop illegal gambling operators, the perpetrators first have to be caught. Since the vast majority of online gambling operators conduct their businesses outside of the country, the ability of the United States to enforce the IGPA would have been extremely limited.<sup>72</sup>

In 2001, Rep. Jim Leach (R-IA) attempted to solve the

<sup>64</sup> S. 692, 106th Cong. § 1085(a)(5)(B) (1999).

<sup>65</sup> See generally *House Votes Down Internet Gambling Prohibition Act*, 12 J. PROPRIETARY RTS. 31 (2000).

<sup>66</sup> See Tom W. Bell, *Gambler's Web: Online Betting Can't Be Stopped – and Why Washington Shouldn't Bother Trying*, CATO INSTITUTE, at <http://www.cato.org/dailys/12-01-99.html> (last visited May 22, 2003).

<sup>67</sup> S. 692, 106<sup>th</sup> Cong. § 1085(b)(1) (1999); see generally A. Gregory Gibbs, Note, *Anchorage: Gaming Capital of the Pacific Rim*, 17 ALASKA L. REV. 343, 350-51 (2000) (discussing the failure of the Internet Gambling Prohibition Act).

<sup>68</sup> S. 692, 106th Cong. § 1085(a)(4)(iii) (1999).

<sup>69</sup> *Id.* Any individual who bets and “has a gross revenue of \$2,000 or more from such business during any 24-hour period” would be classified as a gambling business; see generally Bell, *supra* note 66.

<sup>70</sup> See Tom Lundin, Jr., Note, *The Internet Gambling Prohibition Act of 1999: Congress Stacks the Deck Against Online Wagering But Deals in Traditional Gaming Industry Highrollers*, 16 GA. ST. U. L. REV. 845, 876-77 (2000); Jeffery H. Birnbaum, *Wanna Bet This Bill is Really Strange*, FORTUNE, June 12, 2000, at 70.

<sup>71</sup> *Cf.* Lundin, *supra* note 70, at 850-53, 876-77.

<sup>72</sup> See *infra* Part II.C.

enforcement problems by introducing the Unlawful Internet Gambling Funding Prohibition Act (“UIGFPA”).<sup>73</sup> The UIGFPA would have made it illegal for a gambling business to knowingly accept electronic fund transfers, checks, credit cards, and other forms of payment from a person who participates in Internet gambling.<sup>74</sup> The UIGFPA was designed to cut off Internet gambling at its funding source.<sup>75</sup> However, efforts such as these may prove futile because there are more ways to fund gambling than by credit card, including debit-based systems and digital currency.<sup>76</sup> Some believe that attacking credit cards as a funding source will cause online gambling operators to quickly, and by necessity, switch to a more anonymous digital currency system.<sup>77</sup>

The UIGFPA included penalties of up to 5 years in prison, which was the lengthiest prison time any law had proposed to that date.<sup>78</sup> This legislation’s steep penalty was indicative of the seriousness with which this matter is taken. However, a fundamental problem still remained – the UIGFPA would not have prohibited the use of credit cards to finance online gambling transactions in states where online gambling was licensed or authorized.<sup>79</sup> As its name suggests, UIGFPA only prohibits “unlawful” Internet gambling funding.<sup>80</sup> In essence, the UIGFPA would have allowed individual states to legalize Internet gambling, and further, would have allowed a business located in a state with legalized Internet gambling to service online customers in other

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<sup>73</sup> H.R. 556, 107th Cong. (2001).

<sup>74</sup> See Christopher Wilson et al., *Bill Introduced to Prohibit Use of Credit Cards and Checks for Internet Gambling*, 13 INTELL. PROP. & TECH. L.J. 10, 18 (2001); see also *infra* Parts II.C, III.F.

<sup>75</sup> See Thomas James Friedrich, *Internet Casino Gambling: The Nightmare of Lawmaking, Jurisdiction, Enforcement & the Dangers of Prohibition*, 11 *CommLaw Conspectus* 369, 375 (2003).

<sup>76</sup> See Michael Anastasio, *The Enforceability of Internet Gambling Debts: Laws, Policies, and Causes of Action*, 6 VA. J.L. & TECH. 6, ¶¶ 14-20 (2001) (discussing the alternative funding sources for online gambling).

<sup>77</sup> Cf. Schopper, *supra* note 63, at 318-27 (discussing the feasibility of UIGFPA’s success and its propensity to promote online gambling and money laundering).

<sup>78</sup> See generally *Online Gambling Takes a Political Hit*, CREDIT CARD MANAGEMENT, Nov. 2002, at 10 (discussing the impact of the passing of H. R. 566, the Unlawful Internet Gambling Funding Prohibition Act).

<sup>79</sup> See H.R. 556, 107<sup>th</sup> Cong. § 3(a) (2001). “No person engaged in a gambling business may knowingly accept, in connection with the participation of another person in *unlawful* Internet gambling . . . .” *Id.* (emphasis added) (proposing to punish a credit card company only if the gambling is illegal).

<sup>80</sup> *Id.*

states with legalized online gambling.<sup>81</sup> The UIGFPA failed in the Senate but was reintroduced as House Bill 21 in the first session of the 108th Congress.<sup>82</sup> The reintroduced bill passed the House but was again defeated in the Senate.<sup>83</sup> A new bill is expected to be reintroduced in the House in 2004.<sup>84</sup>

### C. *Jurisdictional Issues*

Jurisdiction, the power or authority of a court to hear and decide a dispute and bind the parties to the result,<sup>85</sup> poses a gigantic hurdle that U.S. lawmakers must overcome in order to hold Internet gambling operators criminally or civilly liable.<sup>86</sup> The vast majority of the 1,200 to 2,000 Internet gambling Web sites are not located within the physical boundaries of the United States.<sup>87</sup> To further complicate the jurisdictional issues, many of the offshore Internet gambling operators operate in countries where Internet gambling is legal.<sup>88</sup>

The two tests that courts have applied to extend personal jurisdiction over parties operating on the Internet are the “*Zippo* test”<sup>89</sup> and the “effects” test.<sup>90</sup> The *Zippo* test inquires into the degree of interactivity between the Web site and the end user in the nation or state in which jurisdiction is sought that determines jurisdiction.<sup>91</sup> The “effects” test focuses on the degree of the effects, that is, the amount of damage intentionally caused by the website in the nation or state in

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<sup>81</sup> See Friedrich, *supra* note 75, at 375.

<sup>82</sup> See H.R. 21, 108th Cong. (2002), available at <http://www.congress.gov/cgi-bin/query/z?c108:HR21> (last visited July 5, 2004).

<sup>83</sup> See Tony Batt, *Internet Gaming Back in the Forefront: Senator WTO Ruling Could Spur Congress to Act*, LAS VEGAS REV. J., LV-ONLINE-GAMING, Jan. 28, 2004, available at <http://www.reviewjournal.com/lvrjhome/2004Apr-02-Fri-2004/business/23573242.html> (last visited July 6, 2004).

<sup>84</sup> See *id.*

<sup>85</sup> See WILLIAM D. ESHEE, JR., ET AL., *THE LEGAL ENVIRONMENT OF BUSINESS* 39 (2003).

<sup>86</sup> See Thompson, *supra* note 14, at 94-99.

<sup>87</sup> See generally Holloway, *supra* note 8, at 10; Kelly statement, *supra* note 8.

<sup>88</sup> See John Borland, *Overseas Policies Undermine U. S. Gambling Ban*, TECH. WEB, July 20, 1998, at <http://content.techweb.com/wire/story/TWB19980720S001> (last visited Mar. 19, 2004).

<sup>89</sup> See *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

<sup>90</sup> See *EDIAS Software Int'l v. Basis*, 947 F. Supp. 413, 420-22 (D. Ariz. 1996).

<sup>91</sup> *Zippo Mfg. Co.*, 952 F. Supp. at 1127.

which jurisdiction is sought.<sup>92</sup> In other words, the *Zippo* test looks to the activity on the website itself and the “effects” test looks to the activity created by the influence generated by the website. Both the *Zippo* and the “effects” test reject the notion that a passive website<sup>93</sup> can invoke personal jurisdiction.<sup>94</sup>

Essentially, each test is trying to determine when the website operator has done enough so that it is fundamentally fair for personal jurisdiction to attach.<sup>95</sup> Because of the intense interactivity by the end user involved in Internet gambling and the unquestioned effect of Internet gambling upon the economy of the end user’s resident state, either the *Zippo* test or the “effects” test are easily satisfied.<sup>96</sup>

In addition to determining personal jurisdiction under U.S. law, there must also be a determination as to whether the country in which the Web site operator is located will enforce any judgment obtained in a U.S. court.<sup>97</sup> This is known as the doctrine of comity.<sup>98</sup> Enforcement of American laws against Internet gambling operators originating from foreign countries is dependent upon this international doctrine of comity, which provides that one nation will enforce the laws of a second nation so long as the laws of the first nation do not offend the law and public policy of the second nation.<sup>99</sup> The countries that allow Internet gambling and draw financial resources from it have no motivation to enforce United States anti-gambling laws.<sup>100</sup> This lack of cooperation from foreign nations creates a difficult enforcement problem and it is the main reason members of Congress have begun to focus on the funding sources. Since the main Internet gambling funding source are credit card companies, which have significant assets in the U.S., some lawmakers believe this will be an effective way to curtail Internet gambling.<sup>101</sup>

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<sup>92</sup> See Denis T. Rice & Julia Gladstone, *An Assessment of the Effects Test in Determining Personal Jurisdiction in Cyberspace*, 58 BUS. LAW. 601 (2003) (discussing thoroughly the differences between the *Zippo* test and effects tests).

<sup>93</sup> A passive Web site is one where there is no or very little interaction between the Web site and the end user.

<sup>94</sup> See *id.*

<sup>95</sup> See *International Shoe Co. v. Washington*, 326 U.S. 310, 326 (1945).

<sup>96</sup> See Rice & Gladstone, *supra* note 92.

<sup>97</sup> See Geist, *supra* note 35, at 1355-60.

<sup>98</sup> See ESHEE ET AL., *supra* note 85, at 188.

<sup>99</sup> See Schwarz, *supra* note 55, at 1048-49.

<sup>100</sup> *Id.* at 1049.

<sup>101</sup> See *infra* Part II.B.

The jurisdiction of any nation to enforce its law is nearly always territorial, in other words, within the physical boundaries of a nation.<sup>102</sup> Absent territorial jurisdiction, the United States must either have the consent of the foreign nation, or find a way to lure the violator back within its own jurisdiction in its effort to enforce its law or judgment.<sup>103</sup> However, procuring the cooperation of other nations in enforcing United States cyberspace related decisions may be difficult. In *Yahoo, Inc. v. LaLigue Contre la Racisme et l'Antisemitisme*, a federal district court refused to honor a French judgment against Yahoo, Inc. The judgment was entered because Yahoo could not prevent Nazi paraphernalia (hate speech in France) from appearing on French websites.<sup>104</sup> The District Court held that it is not "consistent with the Constitution and the laws of the United States for another nation to regulate speech by a United States resident within the United States on the basis that such speech can be accessed by Internet users in that nation."<sup>105</sup> In this case, the United States failed to uphold French laws against criminal conduct on the Internet.<sup>106</sup> Thus, other countries may likewise fail to honor American laws against criminal conduct on the Internet. Hence, even if the United States has the technology to investigate prohibited Internet gambling, it will face formidable obstacles in its efforts to apprehend the violators and have any American judgments enforced.<sup>107</sup> This is not to say that the decision and rationale in *Yahoo* was incorrect, but it exemplifies the idea that the United States must recognize the problems that this decision presents.<sup>108</sup>

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<sup>102</sup> See August, *supra* note 35, at 560-66 (providing an overview of international enforcement jurisdiction as related to electronic commerce); Laura H. Bay-Boychuk, Note, *Internet Gambling: Is Avoiding Prosecution in the United States as Easy as Moving the Business Operations Offshore?*, 6 SW. J. L. & TRADE AM. 363, 378-80 (1999) (proposing extraterritorial jurisdiction but still finding it difficult to get physical jurisdiction of anyone but a United States citizen who engaged in the business of online gambling); Adrian Goss, *Jay Cohen's Brave New World: The Liability of Offshore Operators of Licensed Internet Casinos for Breach of United States' Anti-Gambling Laws*, 7 RICH. J.L. & TECH. 32 (2001) (discussing in depth extraterritorial jurisdiction as it relates to offshore Internet casinos) and Kish, *supra* note 18, at 463 (discussing the technological limitations of enforcement).

<sup>103</sup> *United States v. Romano*, 706 F. 2d 370, 372 (2d Cir. 1982) (showing that defendants were enticed back to the United States from Italy to purchase heroin for redistribution).

<sup>104</sup> 169 F. Supp. 2d 1181 (N.D. Cal. 2001).

<sup>105</sup> *Id.* at 1186.

<sup>106</sup> *Id.*

<sup>107</sup> See generally Geist, *supra* note 35.

<sup>108</sup> See *Yahoo*, 169 F. Supp. 2d at 1181.

### III. Internet Gambling Stakeholders

There is a menagerie of parties that have a stake in Internet gambling, including offshore gambling operators, gambling resort operators,<sup>109</sup> state and local governments, and collateral business interests affected by Internet gambling.<sup>110</sup> These collateral businesses include financial institutions, the tourism industry, and employers whose employees use the business' computers to engage in Internet gambling.<sup>111</sup> Some of these interests converge and others diverge. For example, if the offshore gambling operators siphon revenues from the gambling resort operators, their interests diverge; however, if the offshore gambling operators' activities act as a catalyst to promote more gambling activity at the gambling resorts, then their interests converge.<sup>112</sup> This part of the article examines these various interests and how they interrelate.

#### A. Gambling Business Entities

##### 1. Offshore Operators

As previously noted, unlike legalized gambling operations in the United States, offshore online gambling operations usually avoid significant regulation by American authorities because of jurisdictional issues.<sup>113</sup> Because online gambling is legal in numerous countries, including the United Kingdom, Australia and several Caribbean islands,<sup>114</sup> it is virtually impossible to keep gambling sites off the Internet.<sup>115</sup> However, as noted in Part II.B, lawmakers are now drafting bills that allow the United States government to attack gambling where it does have jurisdiction, including the banks and credit card companies that finance the Internet gambling activities and without which online

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<sup>109</sup> See generally Lantzer, *supra* note 35 (discussing offshore gambling operators, gambling resort operators and their attributes in the context of regulatory schemes after legalization). See also Kilson et. al, *supra* note 23.

<sup>110</sup> See *infra* Part III.B-C.

<sup>111</sup> See *infra* Part III.C.

<sup>112</sup> See generally Geist, *supra* note 35.

<sup>113</sup> See *infra* Part II.C.

<sup>114</sup> See generally Borland, *supra* note 88; NGISC, *supra* note 3 (listing the twenty-five countries that have licensed or proposed legislation to license Internet gambling).

<sup>115</sup> See generally August, *supra* note 35; see also Kish, *supra* note 18; Kilson et al., *supra* note 23.

gambling would be severely curtailed.<sup>116</sup>

It is relatively easy to develop online gambling sites, and the amount of capital needed to start such a venture is small compared to that of a brick-and-mortar gambling parlor.<sup>117</sup> Further, because foreign citizens who do not have substantial contacts within the United States are virtually immune from United States prosecution, the prospect of preventing online gambling operations from operating in the United States appears bleak.<sup>118</sup> The operating headquarters of online casinos are normally located in countries where such gambling is legal<sup>119</sup> so the host country has little or no incentive to help prevent its export to the United States.<sup>120</sup> Also, the explosive increase in the number of online gambling websites<sup>121</sup> and the ability of the operators to freely move these websites, present a virtually impossible tracking task for law enforcement.<sup>122</sup> The ability of the U.S. courts to obtain jurisdiction over online gambling operators can be meaningful, however, where the online gambling operators have significant assets within the reach of the United States.<sup>123</sup> Thus, certain online gambling operators may be within the reach of U.S. law enforcement when they have significant assets within the territorial jurisdiction of the United States, are so large and multi-territorial that such operators cannot afford to ignore a judgment,<sup>124</sup> or where these operators are within the territorial jurisdiction of a country which would honor United States judgments against such operators through principles of comity.<sup>125</sup>

## 2. Domestic Operators

Some brick-and-mortar casinos and online businesses within the United States have begun to develop online gambling websites despite

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<sup>116</sup> See Kilson et al., *supra* note 23.

<sup>117</sup> See generally Harriet Marsh, *Upstarts Raise the Odds for Online Bookies*, *MARKETING*, Feb. 24, 2000, at 19.

<sup>118</sup> See Kish, *supra* note 18, at 462-63 (discussing the scenario where offshore Internet gambling operators can elude United States prosecution); Keller, *supra* note 43, at 1606-07.

<sup>119</sup> See Schopper, *supra* note 63, at 306.

<sup>120</sup> See Schwarz, *supra* note 55, at 1049.

<sup>121</sup> See Schopper, *supra* note 63, at 306.

<sup>122</sup> See *infra* Part III.B.2 (regarding law enforcement and Internet gambling).

<sup>123</sup> See Geist, *supra* note 35, at 1355.

<sup>124</sup> See *id.*

<sup>125</sup> See Schwarz, *supra* note 55, at 1048-49.



state and federal regulations prohibiting the activity.<sup>126</sup> MGM Mirage and Harrah's Entertainment have recently signed agreements with Silicon Gaming and Chartwell, respectively, to run "for fun gambling sites that could eventually become big moneymakers when Nevada's legislation goes through."<sup>127</sup> Harrah's, MGM Mirage, and Playboycasino.com have positioned themselves to take advantage of online gambling's potential growth by developing the Internet infrastructure for online gambling, but not actually operating a gambling site, with the hope of attracting customers to its brick-and-mortar casinos through the Internet games.<sup>128</sup> Because predictions of oversaturation of the gambling market have proven false, these major casinos are betting that Internet gambling will be a boon to actual casino gambling.<sup>129</sup>

However, gambling resort operators are also threatened by the proliferation of offshore online gambling site operators for two reasons.<sup>130</sup> First, gambling resort operators are losing market share to the offshore online casinos.<sup>131</sup> Second, hundreds of offshore online gambling operators engage in cyberpiracy by stealing Internet domain names to imply they are affiliated with famous Las Vegas casino hotels.<sup>132</sup> Such actions can tarnish the reputation of the casino hotel.<sup>133</sup> A district court has held that the United States has jurisdiction over offshore gambling operations which provide United States residents with access to an interactive website.<sup>134</sup> Since online gambling websites

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<sup>126</sup> Randy Barrett, *U.S. Casinos Place Bets on Future of Internet Gambling*, INTERACTIVE WEEK, Sept. 3, 2000, at 10.

<sup>127</sup> See *id.*; Holloway, *supra* note 8; *Technology Briefing Internet: Harrah's to Start Gambling Site in Britain*, N.Y. TIMES, Nov. 13, 2003, at C3.

<sup>128</sup> See Barrett, *supra* note 126.

<sup>129</sup> See NGISC, *supra* note 3.

<sup>130</sup> Randy Barrett, *Nevada Rolls Net Gaming Dice*, EWEK ENTERPRISES NEWS AND REVIEWS, at <http://www.eweek.com/article2/0,1759,1242721,00.asp> (last visited June 12, 2004).

<sup>131</sup> See *id.*

<sup>132</sup> See generally Mark Veverka, *Cybersquatters Roll the Dice and Lose in Las Vegas*, BARRON'S, October 15, 2001, at 40.

<sup>133</sup> *Id.*

<sup>134</sup> *Alitalia-Linee Aeree Italiane v. Casinoalitalia.com*, 128 F. Supp. 2d 340, 349-350 (E.D.Va. 2001) (granting the United States jurisdiction over a Dominican Republic company in a domain name trademark infringement case where the Internet gambling website was interactive); see also John M. Cone, *Cyberpiracy - The U.S. Legislative Response*, 6 COMPUTER L. REV. & TECH. J. 221 (2002) (discussing jurisdiction problems in domain name contests).

are interactive by their very nature and target American gamblers, resort casino operators should not have serious United States jurisdiction issues. However, enforcement of any judgment obtained pursuant to United States jurisdiction may not be effective unless the violators have significant assets within the United States.<sup>135</sup>

## B. *State and Local Government Concerns*

### 1. Public Policy Issues

There are a number of public policy concerns that face state and local governments with regard to Internet gambling operations. Among those concerns are the Internet gambling operator's failure to pay taxes on the revenue,<sup>136</sup> effects on vulnerable consumers,<sup>137</sup> and effects on bankruptcy increases.<sup>138</sup> Further, while gambling has traditionally been the regulatory domain of state governments,<sup>139</sup> the obvious interstate nature of the Internet may prevent states from acting in this area for fear of being charged with unduly burdening interstate commerce.<sup>140</sup>

#### a. Tax Avoidance

American lawmakers are significantly concerned because, while Internet gambling operators in the U.S. do not pay taxes, these operators cause societal ills that tax monies have to remedy.<sup>141</sup> Further, Internet gambling is unlike land-based gambling which, although it may reduce jobs in competing sectors of the economy, will invariably produce some

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<sup>135</sup> See Geist, *supra* note 35.

<sup>136</sup> See *infra* Part III.B.1.a.

<sup>137</sup> See generally John Warren Kindt & John K. Palchak, *Legalized Gambling's Destabilization of U. S. Financial Institutions and the Banking Industry: Issues in Bankruptcy, Credit and Social Norm Production*, 19 BANK. DEV. J. 21 (2002) (where the various ills associated with legalized gambling are documented).

<sup>138</sup> *Id.*

<sup>139</sup> See David Goodman, *Proposals for a Federal Prohibition of Internet Gambling: Are There Any Other Viable Solutions to This Perplexing Problem?*, 70 MISS. L.J. 375, 379-85 (2000) (discussing the traditional relationship between the state and federal governments in relation to gambling in general as well as some of the states' concerns about the federal regulation of Internet gambling).

<sup>140</sup> See Kenneth D. Bassinger, *Dormant Commerce Clause Limits on State Regulation of the Internet: The Transportation Analogy*, 32 GA. L. REV. 889, 895-99, 914-22 (1998) (discussing the aspect of the Commerce Clause that prevents state laws and regulations from incidentally unduly burdening interstate commerce).

<sup>141</sup> See *infra* Part III.B.1.b-c.

jobs to compensate for the loss.<sup>142</sup> Internet gambling, on the other hand, while causing job reduction in its competing sectors of the economy, will produce very few jobs to compensate for the job reduction.<sup>143</sup> For example, a domestic Las Vegas-styled brick-and-mortar casino costs at least several hundred million dollars to build, equip, and staff, generating perhaps hundreds of jobs. However, Internet Casinos, Inc.<sup>144</sup> opened for business at a cost of \$1.5 million and created only seventeen new jobs.<sup>145</sup>

Many states now depend upon revenues garnered from traditional casino gambling to balance their budgets.<sup>146</sup> Furthermore, state regulators traditionally heavily regulate the gambling business in an effort to maintain the integrity of the gaming establishments and their players.<sup>147</sup> Internet gambling is seen by many gambling-oriented states as a real threat to these vital revenue sources, some legislatively banning Internet gambling,<sup>148</sup> while others have banned such activity through court decisions.<sup>149</sup>

Some states believe that regulation of Internet gambling may be more beneficial than an outright ban.<sup>150</sup> Internet gambling is difficult to

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<sup>142</sup> See Jeffrey A. Dempsey, Comment, *Surfing for Wampum: Federal Regulation of Internet Gambling and Native American Sovereignty*, 25 AM. INDIAN L. REV. 133, 141 (2000/2001).

<sup>143</sup> See *Unlawful Internet Gambling Funding Prohibition Act and the Combating Illegal Gambling Reform and Modernization Act: Hearing on H.R. 556 and H.R. 3215 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 107th Cong. 13 (2001) [hereinafter *Unlawful Internet Gambling*] (statement of Rep. James Leach, R-IA); see also Dempsey, *supra* note 142, at 141.

<sup>144</sup> See Janower, *supra* note 7.

<sup>145</sup> See John Warren Kindt & Stephen W. Joy, *Internet Gambling and the Destabilization of National and International Economics: Time for a Comprehensive Ban on Gambling Over the World Wide Web*, 80 DEN. U. L. REV. 111, 129 (2002).

<sup>146</sup> See Tyler Bridges, *Legislators Convene in Miami To Discuss Gambling Issues*, MIAMI HERALD, Jan. 10, 2003 at 2B.

<sup>147</sup> See generally Mark G. Tratos, *Gaming on the Internet*, 3 STAN. J. L. BUS. & FIN. 101, 111-12 (1997) (discussing the problem of consumer confidence in Internet casino operators).

<sup>148</sup> *Gaming Attorneys Meet in Las Vegas to Address Issues Facing Industry*, GAMING INDUSTRY LITIG. REP., Apr. 2000, at 6. (discussing the fact that Nevada, Louisiana, Illinois and Michigan had banned Internet gambling; however, Nevada has since legalized Internet gambling).

<sup>149</sup> See generally Jenna F. Karadbil, Note, *Casinos of the Next Millennium: A Look into the Proposed Ban on Internet Gambling*, 17 ARIZ. J. INT'L & COMP. L. 413, 419-26 (2000) (discussing court actions taken in Missouri, Minnesota, New York, Florida, Texas, and Indiana).

<sup>150</sup> See Kish, *supra* note 18, at 463-66; Lantzer, *supra* note 35.

regulate by its very nature.<sup>151</sup> However, failure to regulate could present the perplexing problems of dwindling revenues from traditional gambling sources while experiencing an increase in the enforcement burden because of the proliferation of unscrupulous, unregulated Internet casino operators.<sup>152</sup> Because the Internet transcends geographical boundaries, many states believe that federal regulation is the only means by which the issue can be addressed.<sup>153</sup>

### b. Consumer Vulnerability

One of the main criticisms of online gambling is its potential for exploitation of vulnerable consumers.<sup>154</sup> Vulnerability is defined as a "susceptibility to injury or being taken advantage of by another person."<sup>155</sup> Vulnerable consumers have been described as small groups of consumers with unique reactions to products considered harmless when used by most people.<sup>156</sup> This definition has been refined to include consumers with limited physical and mental competencies and limited sophistication levels.<sup>157</sup> Adolescents are considered vulnerable consumers<sup>158</sup> because they have a greater tendency to be irrational thinkers and are susceptible to addictive behaviors, such as overeating, alcoholism, and gambling.<sup>159</sup>

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<sup>151</sup> See Kindt & Joy, *supra* note 145, at 127-28.

<sup>152</sup> See Schwarz, *supra* note 55, at 1025 (noting that illegal Internet gambling sites pay nothing for the social ills they cause, such as gambling addiction and treatment, protection of underage gamblers, and enforcement costs).

<sup>153</sup> See Craig Lang, *Internet Gambling: Nevada Logs In*, 22 LOY. L.A. ENT. L. REV. 525, 545-47 (2002) (discussing the impact of Nevada's legalization of online gambling); See Kish, *supra* note 18; Cara Franklin, *Virtual Vegas: Regulate or Prohibit?*, 2001 DUKE L. & TECH. REV. 21 (2001) (discussing the need for regulation in order to formulate an enforcement protocol that will address some of the state's needs and concerns).

<sup>154</sup> See Kindt & Joy, *supra* note 145, at 114-16.

<sup>155</sup> Craig N. Smith & Elizabeth Cooper-Martin, *Ethics and Target Marketing: The Role of Product Harm and Consumer Vulnerability*, J. MARKETING 1, 7 (July 1997).

<sup>156</sup> See Fred W. Morgan et al., *A Framework for Examining Legal Status of Consumers*, J. PUB. POL'Y & MARKETING 267 (Fall 1995).

<sup>157</sup> *Id.*

<sup>158</sup> See ALEX GLITTERMAN, HANDBOOK OF SOCIAL WORK PRACTICE WITH VULNERABLE POPULATIONS (1990); Richard W. Pollay, *Targeting the Young is an Old Story: A History of Cigarette Advertising to the Young*, 1993 CONFERENCE ON HISTORICAL RESEARCH IN MARKETING AND MARKETING THOUGHT 263.

<sup>159</sup> See Stevie Watson, *Online Casinos and Adolescents: A Social Marketing Perspective to Compulsive Consumption and Gambling*, 2002 AMERICAN MARKETING ASSOCIATION WINTER EDUCATORS' CONFERENCE PROCEEDINGS: MARKETING THEORY AND APPLICATIONS, 336-37 (examining the social problems of online gambling and adolescents) (on file with

Groups most vulnerable to the dangers of online gambling include underage persons<sup>160</sup> and pathological gamblers.<sup>161</sup> Wagering amounts can be fairly easy and inexpensive for the online gambler.<sup>162</sup> One can play online gambling games for as little as a quarter, and in some cases a nickel.<sup>163</sup> The low cost, availability,<sup>164</sup> anonymity, and videogame like features<sup>165</sup> of online gambling will likely attract vulnerable consumers.<sup>166</sup>

The popularity of Internet gambling may also result in higher rates of compulsive gambling.<sup>167</sup> Compulsive gambling, a form of compulsive consumption,<sup>168</sup> is often referred to as problem gambling, or pathological gambling.<sup>169</sup>

author).

<sup>160</sup> *Id.*

<sup>161</sup> See *Acting Against Online Gambling*, COMPUTIMES MALAYSIA, Jan. 31, 2000; Mark Griffiths & Richard T.A. Wood, *Risk Factors in Adolescence: The Case of Gambling, Videogame Playing, and the Internet*, J. GAMBLING STUDIES 199 (2000).

<sup>162</sup> See Scott Olson, *Betting No End to Internet Gambling*, 4 J. TECH. L. & POL'Y 2 (1999).

<sup>163</sup> See Janower, *supra* note 7; Holloway *supra* note 8.

<sup>164</sup> See Howard J. Shaffer et al., *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Research Synthesis*, AMERICAN J. PUB. HEALTH 1369 (1999).

<sup>165</sup> See Kish, *supra* note 18.

<sup>166</sup> See John J. Savilia, *Cyber Games?: Regulation of Internet Gambling in the United States*, 34 SUFFOLK U. L. REV. 347, 357 (stating that the National Gambling Impact Study Commission found that the working poor, elderly, and adolescents were the most susceptible groups to pathological gambling disorders).

<sup>167</sup> See Michael J. Thompson, *supra* note 59, at 25; National Coalition Against Gambling, *The Case Against Legalized Gambling*, at <http://ncalg.org/case.htm> (last visited Mar. 28, 2003).

<sup>168</sup> See generally Anthony T. Carr, *Compulsive Neurosis: A Review of the Literature*, PSYCHOL. BULL., May 1974, at 311. Compulsive consumption is a serious social concern because compulsive individuals have little control over their behaviors. *Id.* They engage in behaviors similar to that of addicts. See Ronald J. Faber, Thomas C. O'Guinn & Raymond Krych, *Compulsive Consumption*, ADVANCES IN CONSUMER RESEARCH, October 1987, at 132. Compulsive consumption is an inappropriate type of consumer behavior that is excessive and potentially harmful to individuals. *Id.* Some consider these individuals to be fantasy seekers. See generally Thomas C. O'Guinn & Ronald Faber, *Compulsive Buying: A Phenomenological Exploration*, J. CONSUMER RES. 147 (Sept. 1989); Alvin C. Burns et al., *An Exploratory Study of Lottery Playing, Gambling Addiction, and Links to Compulsive Consumption*, ADVANCES IN CONSUMER RESEARCH, 1990, at 298. Others believe they have low self-esteem. See generally Alain d'Astous et al., *Compulsive Buying Tendencies of Adolescent Consumers*, ADVANCES IN CONSUMER RESEARCH, 1990, at 306; O'Guinn & Faber, *supra*, n.50. Unlike normal buyers, compulsive buyers' motives are not tied to possessions, but to the act of buying. See Alsin d'Astous, *An Inquiry into the Compulsive Side of Normal Consumers*, J. CONSUMER POL'Y 15 (Mar. 1990).

<sup>169</sup> See Janower, *supra* note 7; see also Holloway, *supra* note 8.

Compulsive gambling may lead to serious societal and health-related problems, such as divorce,<sup>170</sup> crime, violence,<sup>171</sup> drug abuse, prostitution, bankruptcy,<sup>172</sup> depression, and suicide.<sup>173</sup> Gambling regulators fear that online gamblers share similar characteristics to those of casino gamblers.<sup>174</sup> Casino gamblers appear to be sensation seekers or individuals who seek arousal and excitement in their activities.<sup>175</sup> The nonstop access of online gambling to vulnerable consumer groups has the potential to magnify the problems associated with traditional gambling.<sup>176</sup>

The online casino industry has not developed adequate safeguards to protect adolescents from the compulsive behaviors that lead to societal and health ailments.<sup>177</sup> Age control is futile with online gambling.<sup>178</sup> Even age control in traditional land-based casinos has been difficult in Atlantic City and Las Vegas.<sup>179</sup> Mature-looking teenagers, fake identification cards, and lack of surveillance contribute to the failure to enforce age control.<sup>180</sup> Because of the easy access, adolescents and underage persons have fewer deterrents to online gambling.<sup>181</sup> In an

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<sup>170</sup> See generally NGISC, *supra* note 3.

<sup>171</sup> See Joseph Friedman et al., *Casino Gambling as a Growth Pole Strategy and Its Effect on Crime*, J. REGIONAL SCIENCE 615 (1989).

<sup>172</sup> See Mark W. Nichols et al., *Casino Gambling and Bankruptcy in New United States Casino Jurisdictions*, J. SOCIO-ECONOMICS 247 (2000).

<sup>173</sup> See Alex Blaszczynski & Eimear Farrell, *A Case Series of 44 Completed Gambling-Related Suicides*, J. GAMBLING STUDIES 93 (1998); David Lester & Donald Jason, *Suicides at the Casinos*, PSYCHOLOGICAL REPORTS, 1998, at 337; Alfonso R. Oddo, *The Economics and Ethics of Casino Gambling*, REV. BUS. 4 (1997); NGISC, *supra* note 3.

<sup>174</sup> See Storm A. King and Azy Barak, *Compulsive Internet Gambling: A New Form of an Old Clinical Pathology*, CYBERPSYCHOLOGY & BEHAVIOR, Oct. 1999, at 441.

<sup>175</sup> See G. Anderson & Iain R. Brown, *Realand Laboratory Gambling, Sensation Seeking and Arousal*, BRIT. J. PSYCHOL. 401 (1984); Kenny R. Coventry & Iain R. Brown, *Sensation Seeking, Gambling, and Gambling Addictions*, ADDICTIONS, 1993, at 541.

<sup>176</sup> See King, *supra* note 175.

<sup>177</sup> See Gregory K. Fritz, *Society Can't Ignore Gambling's Effect on Adolescents*, Brown University Child & Adolescent Behavior Letter, Aug. 2003, at 8.

<sup>178</sup> See Peter G. Neumann, *Internet Gambling*, ASSOC'N FOR COMPUTING MACHINERY, 1998, at 112.

<sup>179</sup> See Alan F. Areuri et al., *Shaping Adolescent Gambling Behavior*, ADOLESCENCE 935 (1985); Michael L. Frank, *Underage Gambling in Atlantic City Casinos*, PSYCHOLOGICAL REPORTS 907 (1990); B. Grant Stitt et al., *A Minor Concern? Underage Casino Gambling and the Law*, SOCIAL SCIENCE JOURNAL 361 (2000).

<sup>180</sup> See Durand F. Jacobs, *Juvenile Gambling in North America: An Analysis of Long Term Trends and Future Prospects*, J. GAMBLING STUDIES 119, Fall 2000.

<sup>181</sup> See Fritz, *supra* note 177.

effort to address this issue, MGM Mirage recently revealed that it has developed control protocol that allows it to screen underage gamblers on the Internet.<sup>182</sup> Further, MGM now accepts online bets from Spain, where Internet gambling is legal, hoping that a demonstration of age control viability will help gain legislative acceptance for Internet gambling in the United States.<sup>183</sup>

### c. Upsurge in Bankruptcies

Bankruptcies in the United States are on the rise, and studies have shown that legalized gambling is the fastest growing and third leading cause of bankruptcies.<sup>184</sup> Some believe that Internet gambling will have a greater impact on the number of bankruptcy cases.<sup>185</sup> In a 1997 study, SMR Research Corporation found that in counties where land-based casinos were located the bankruptcy rates were significantly higher than the national bankruptcy rate.<sup>186</sup> This bankruptcy rate dichotomy should cause alarm because Internet gambling places multiple casinos in, not only every county, but in every household in every county in America.

The potential rise in bankruptcy filings is not only detrimental to individual debtors and their creditors, it can be detrimental to the collective financial security of the nation as a whole.<sup>187</sup> Unchecked Internet gambling has the potential to strain our credit system<sup>188</sup> by creating massive numbers of compulsive gamblers,<sup>189</sup> over ninety percent of whom use credit cards.<sup>190</sup> The compulsive gambler's rate of default on debt obligations and bankruptcy filing is twice the rate of the non-gambler.<sup>191</sup> Resulting financial market repercussions are inevitable because banking institutions and credit card companies are forced to

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<sup>182</sup> See Ari Weinberg, *Betting Against the House*, FORBES.COM, at [http://www.forbes.com/2002/10/02/1002gambling\\_print.html](http://www.forbes.com/2002/10/02/1002gambling_print.html) (last visited Mar. 19, 2004).

<sup>183</sup> See *id.*

<sup>184</sup> See Kindt & Palchak, *supra* note 137.

<sup>185</sup> See NGISC, *supra* note 3.

<sup>186</sup> See Kindt & Palchak, *supra* note 137, at 29 (citing a study of bankruptcy trends by SMR Research Corporation).

<sup>187</sup> See KINDT & JOY, *supra* note 145, at 116.

<sup>188</sup> See Unlawful Internet Gambling, *supra* note 143.

<sup>189</sup> See *infra* Part III.B.1.b.; see also Dempsey, *supra* note 142.

<sup>190</sup> See generally Schopper, *supra* note 63, at 305; David Strow, *Wells Fargo to Ban Cards for Internet Gambling*, LAS VEGAS SUN, Dec. 12, 2000, available at <http://www.lasvegassun.com/sunbin/stories/gaming/2000/dec/12/511161819.html> (last visited Mar. 7, 2004).

<sup>191</sup> *Id.*

compensate for these consequences by raising their rates to cover the increasing problems.<sup>192</sup>

## 2. Law Enforcement Issues

The nature of the Internet makes it difficult to enforce online laws.<sup>193</sup> Internet users have the ability to disguise their identities, and as previously stated many online gambling sites are operated by entities or individuals located outside of the United States.<sup>194</sup> Jurisdictional issues<sup>195</sup> and tracking cybertransactions make online gambling an attractive option for criminal activities.<sup>196</sup> To illustrate the law enforcement predicament, simply enter the Internet domain name [www.gambling.com](http://www.gambling.com)<sup>197</sup> and one can appreciate that, despite the Wire Act prohibition on online gambling, numerous offshore sports betting sites are available to the American consumer.<sup>198</sup>

### a. Incidences of Organized Crime

Gambling has long been a staple of organized crime.<sup>199</sup> In fact, gambling is organized crime's second leading money generator, second only to the sale of illegal drugs.<sup>200</sup> Although much of gambling is run by

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<sup>192</sup> *Id.*

<sup>193</sup> See Laura H. Bak-Boychuk, *Internet Gambling: Is Avoiding Prosecution in the United States As Easy As Moving the Business Operations Offshore?*, 6 SW. J. L. & TRADE AM. 363 (1999) (discussing the issue of offshore gambling operations and the avoidance of prosecution).

<sup>194</sup> See Holloway, *supra* note 8.

<sup>195</sup> See August, *supra* note 35; Michael P. Kailus, *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 U. ILL. L. REV. 1045, 1062-65 (1999) (discussing problems of United States jurisdiction over offshore gambling operations and enforcement of United States judgments).

<sup>196</sup> See *Money Laundering Online*, OECD OBSERVER, available at [http://www.oecdobserver.org/news/fullstory.php/472/Money\\_laundering-online.html](http://www.oecdobserver.org/news/fullstory.php/472/Money_laundering-online.html) (last visited July 6, 2004).

<sup>197</sup> (last visited May 31, 2003).

<sup>198</sup> See Christopher Fazekas, *Vigilantes v. Pirates: The Rumble Over Peer-to-Peer Technology Hits the House Floor*, 2002 DUKE L. & TECH. REV. 20 (2002) (discussing the ease with which technology impeding laws can be circumvented or ignored); Mark D. Lynch, *The Smart Money Is On Prosecutions: Using the Federal Interstate Wire Act to Prosecute Offshore Telephone Gambling Services*, 10 IND. INT'L & COMP. L. REV. 177-185 (1999) (discussing the burgeoning offshore sports betting business in detail).

<sup>199</sup> See generally Kelley Bergelt, Comment, *Stimulation by Stimulation: Is There Really Any Difference Between Actual and Virtual Child Pornography? The Supreme Court Gives Pornographers a New Vehicle for Satisfaction*, 31 CAP. U. L. REV. 565 n.7 (2003).

<sup>200</sup> See generally *id.*



large corporate entities, many believe that organized crime runs gambling.<sup>201</sup> Some fear that Internet gambling is ripe for organized crime infiltration because of its low entry cost<sup>202</sup> and the huge potential for profits, especially in money laundering activities.<sup>203</sup>

Originally criminalized to fight the war on drugs,<sup>204</sup> money laundering<sup>205</sup> activities are a major concern for opponents of online gambling.<sup>206</sup> Money laundering is a complicated process that involves three steps: placement, layering, and integration.<sup>207</sup> These steps require the moving of illegal funds to legal activities, performing complicated transfers to cover the audit trail, and then reinvesting the funds in legitimate enterprises.<sup>208</sup> Gambling facilitates money laundering because it allows customers to gamble with illegal funds and then use the winnings as legitimate funds that are documented.<sup>209</sup> Because of its easy accessibility, Internet gambling may contribute to this problem, although some argue that the nature of the Internet facilitates electronic audit trails of financial transactions.<sup>210</sup>

#### b. Increases in Local Crimes

State and local governments are concerned about the relationship between Internet gambling and the increase in local crime.<sup>211</sup> Most local crime attributed to gambling emanates from compulsive gambling

<sup>201</sup> See generally, James H. Frey, *Gambling, Socioeconomic Impacts and Public Policy: Preface*, 556 ANNALS 138 (1998); *Internet Gambling: U.S. Struggles to Cover the Spread*, MIAMI DAILY BUS. REV. Jan. 30, 2004, at 3.

<sup>202</sup> See generally Schwarz, *supra* note 55, at 1024-25.

<sup>203</sup> See Schopper, *supra* note 63 at 311-12.

<sup>204</sup> *Id.* at 775-76. The bombing of the twin towers on September 11, 2001, changed the focus of money laundering to terrorist activities as President Bush announced a worldwide crackdown on money laundering activities that enhanced the capabilities of terrorist organizations. *Id.* at 772. However, there is little or no empirical evidence that suggests terrorists are using Internet gambling to launder funds. See generally Gregory Manter, *The Pending Determination of the Legality of Internet Gambling in the United States*, 2003 DUKE L. & TECH. REV. 16 (2003).

<sup>205</sup> See Morgan, *supra* note 207, at 776 (defining money laundering as "the disguising of the proceeds of a crime so they can be saved, spent or reinvested with less risk").

<sup>206</sup> See Mills, *supra* note 206 (discussing the mechanisms and impact of money laundering through online casinos).

<sup>207</sup> See Schopper, *supra* note 63, at 313.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 314.

<sup>211</sup> See Kindt & Palchak, *supra* note 137, at 36-37.

behavior.<sup>212</sup> Interestingly, legalized land-based gambling is related to crime increases, and that the crime increases are related to an increase in pathological gamblers.<sup>213</sup> This relationship between the increase in pathological gamblers and the increase in crime has fueled speculation that the ready availability of Internet gambling will cause a rise in the compulsive gambler population<sup>214</sup> and a related rise in crime.<sup>215</sup> Typically, white-collar, property and petty crimes rise due to the compulsive gamblers' need for cash.<sup>216</sup> Since the Internet is local to every city in America, it has the potential to bring both the pathological gambling problem, and the attendant crime problem, to every American jurisdiction.

### C. Collateral Business Concerns

#### 1. Financial Institutions

Edward J. Janger, a noted creditor law professor, has raised concerns about the ability of both the consumer credit industry and American citizens to act responsibly concerning online gambling.<sup>217</sup> It has been estimated that online gambling receives approximately ninety percent of its revenue through credit card payments.<sup>218</sup>

The UIGFPA<sup>219</sup> proposes to allow the federal government to control Internet gambling by cutting off its funds.<sup>220</sup> However, the major

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<sup>212</sup> See generally Christopher T. O'Connor, Comment, *A Return to the Wild West: The Rapid Deregulation of the Riverboat Casino Gambling Industry in Missouri*, 19 ST. LOUIS U. PUB. L. REV. 155, 171 (2000).

<sup>213</sup> See Kindt & Palchak, *supra* note 137 at 36-37; John Warren Kindt, *The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance*, 27 S. ILL. U. L.J. 219, 247-48 (2003); Theresa A. Gabaldon, *John Law, with a Tulip, in the South Seas: Gambling and the Regulation of Euphoric Market Transactions*, 26 IOWA J. CORP. L. 225, 265 (2001).

<sup>214</sup> See Thompson, *supra* note 14.

<sup>215</sup> See Friedman, *supra* note 171.

<sup>216</sup> H. Neil Browne, Virginia Morrison & Kara Jo Jennings, *The Role of Ethics in Regulatory Discourse: Can Market Failure Justify the Regulation of Casino Gaming?*, 78 NEB. L. REV. 37, 50-51 (1999).

<sup>217</sup> See generally Edward J. Janger, *The Locus of Lawmaking: Uniform State Law, Federal Law, and Bankruptcy Reform*, 74 AM. BANKR. L.J. 97, 97-101 (2000) (discussing the market forces surrounding the consumer credit industry).

<sup>218</sup> See Bruce Zagaris, *Citibank Blockage of Use of Credit Cards for Internet Gaming Shows Trend*, INT'L ENFORCEMENT L. REP., Aug., 2002.

<sup>219</sup> See H.R. 566, 107th Cong. (2001).

<sup>220</sup> See *infra* Part II.B.

credit card companies have opposed this effort.<sup>221</sup> The credit card companies point out two reasons for opposing this method of Internet gambling control. First, there is a difficulty in monitoring such transactions. Second, if the law is successful in cutting off the credit card funds, it would drive customers to alternative and more clandestine types of electronic payments,<sup>222</sup> such as electronic money.<sup>223</sup>

Internet gambling operators may find it difficult collecting gambling debts from residents of states where casino gambling is illegal. This became apparent in 1998 when Cynthia Haines was sued by Providian National Bank for a \$70,000 credit card debt.<sup>224</sup> She filed a counter-suit against MasterCard International, Visa International, Visa U.S.A., 2001 Discover Card, and Providian National Bank alleging that she lost \$115,000 at Internet casinos using a variety of credit cards.<sup>225</sup> The substance of Haines' counterclaim was that banks and credit card companies were engaged in unfair business practices.<sup>226</sup> This counter-suit alarmed the creditors because Haines alleged that their actions amounted to criminal activity, aiding and abetting gambling in California where casino gambling is illegal.<sup>227</sup> The credit card companies settled the suit, discharging Ms. Haines from the repayment of her gambling debt.<sup>228</sup> Discover Card further agreed to refrain for

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<sup>221</sup> See Schopper, *supra* note 63, at 310.

<sup>222</sup> *Id.* at 310-11.

<sup>223</sup> *Id.* at 314 (defining electronic money as "a money replacement based on encryption technologies that disguises the electronic information set that only the intended recipient can access its meaning").

<sup>224</sup> See generally Jon Patterson, Comment, *Internet Gambling: Internet Gambling and the Banking Industry: An Unsure Bet*, 6 N.C. BANKING INST. 665 (2002) (discussing Internet banking as relative to Internet gambling in light of *Providian National Bank v. Haines*).

<sup>225</sup> *Providian v. Haines*, No. CV980858 (Cal. Super. Ct. Marin Cty. Cross complaint filed July 23, 1998) [hereinafter *Providian*]. See Alan B. Koslow and Shawn D. Preston, *Can Internet Gambling Survive Without Credit Cards? Debtors Sue MasterCard and Visa*, ENT. L. & BUS., Spring 2000, at [www.becker-poliakoff.com/publications/newsletters/e/spring00/internet\\_gaming\\_credit\\_cards.htm](http://www.becker-poliakoff.com/publications/newsletters/e/spring00/internet_gaming_credit_cards.htm) (last visited Mar. 17, 2003); Patterson, *supra* note 224, at 665.

<sup>226</sup> See *Providian*, *supra* note 225.

<sup>227</sup> See Patterson, *supra* note 224.

<sup>228</sup> Cf. *Metropolitan Creditors Service v. Sadri*, 19 Cal. Rptr. 646 (1993) (holding that even without the allegation of criminal activity, the creditor could not collect a gambling debt since the collection of a gambling debt was against public policy); Charles B. Brundage, *Playing for Free? The Legality and Enforceability of On-Line Gambling Debts*, 12 PACE INT'L L. REV. 153, 168-77 (2000) (discussing the impact of *Providian*); David I. Gold, *Internet Gambling Debt Liability: Trouble Ahead? A Consideration of Providian v. Haines*, 22 T. JEFFERSON L. REV. 219, 234-36 (2000) (discussing the ramifications of

three years from operating merchant accounts with online casinos that may service California residents.<sup>229</sup>

Gambling debtors, however, received a setback in November, 2002, when the Fifth Circuit Court of Appeals affirmed the dismissal of a class action suit designed to eliminate credit card holders' liability for online gambling debts.<sup>230</sup> The suits alleged violations of the RICO statute<sup>231</sup> through the creation of a "worldwide gambling enterprise" that aided and abetted online gambling through the exploitation of credit card customers.<sup>232</sup> In order to establish RICO violations, plaintiffs alleged violations of the Interstate Wire Act, mail fraud, wire fraud, and other federal and state laws, including the collection of an unlawful debt.<sup>233</sup> The Fifth Circuit affirmed the district court's holding that the plaintiffs were unable to show that the credit card companies, or the issuing bank, had engaged in any criminal conduct that would invoke the applicability of RICO, and thus lacked standing to sue.<sup>234</sup>

Based on this holding, it will be difficult for gamblers to discharge credit card gambling debt in federal court. However, this decision may not affect state court claims that are not based on RICO, such as the case with Cynthia Haines.<sup>235</sup> It must also be noted that while the Fifth Circuit gave credit card companies and issuing banks a victory, that very same victory may fuel the need to press the federal government for laws prohibiting online gambling, or its funding through the use of credit cards and other financial vehicles.

## 2. Support and Feeder Industries

### a. Tourism Industry

The tourism industry may also suffer at the hands of Internet gambling.<sup>236</sup> Traditional casinos attract many patrons to their land-based

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Providian on various Internet gambling parties).

<sup>229</sup> See Lisa M. Bowman, *Discover Card Nixes Credit for Net Gambling*, C/NET NEWS.COM, at <http://news.com.com/2100-1023-258267.html> (last visited Mar. 19, 2004).

<sup>230</sup> *MasterCard*, 313 F.3d at 257.

<sup>231</sup> 18 U.S.C. §§ 1961-1968 (1970).

<sup>232</sup> See *MasterCard*, 313 F.3d at 259.

<sup>233</sup> See *id.* at 273.

<sup>234</sup> See *id.* at 263-64.

<sup>235</sup> See *Providian*, *supra* note 225.

<sup>236</sup> See R. Scott Girdwood, *Place Your Bets . . . On the Keyboard: Are Internet Casinos Legal?*, 25 CAMPBELL L. REV. 135, 138-39 (2002) (discussing the effects of Internet

gambling locations.<sup>237</sup> However, Internet gambling takes place within the confines of the gambler's home. The absence of the need to physically travel will negatively affect the whole gamut of the gambling tourism industry.<sup>238</sup> This will affect everything from transportation, accommodations, food, and souvenirs. In addition, these diminished revenue sources will have a negative impact on the tax revenue of the affected locales.<sup>239</sup>

#### b. Employers

Employers will also be affected by the legislation of Internet gambling.<sup>240</sup> Under the doctrine of *respondeat superior*, an employer may be liable for the illegal or criminal acts of its employees that occur within the scope of their employment.<sup>241</sup> Because the Internet simplifies the process of creating an online gambling operation, employers may have a greater duty to be aware of the activities of its employees.<sup>242</sup> The mere act of giving employees access to the Internet on company computers may be grounds for a court to hold that the activity is within the scope of employment.<sup>243</sup> Although federal law currently does not punish the individual act of Internet gambling, an employer may be held liable for an employee's online gambling behavior if three conditions are met: (1) the employee is operating as a gambling business, (2) the gambling business is operated while the employee is within the scope of employment, and (3) the employer knew or should have known about the wrongful act.<sup>244</sup> The prudent employer will put policies and procedures in place to prevent any online gambling activities so that there will be less opportunity for such activity to escalate to the level of a business.<sup>245</sup> The ancient adage that, "An ounce of prevention is worth

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gambling on tourism).

<sup>237</sup> See *id.*

<sup>238</sup> See generally *id.* at 139.

<sup>239</sup> *Id.*

<sup>240</sup> See Ishman, *supra* note 10, ¶¶ 8-18.

<sup>241</sup> See *United States v. A & P Trucking*, 358 U.S. 121, 125 (1958) (where the court held that partnerships can be liable for "knowing" and "willful" regulatory violations under the doctrine of *respondeat superior*).

<sup>242</sup> See Ishman, *supra* note 10, at ¶ 85.

<sup>243</sup> See *id.* ¶ 86.

<sup>244</sup> See *id.* ¶ 70.

<sup>245</sup> See *id.* ¶¶ 85-86.

a pound of cure” bears mentioning here.<sup>246</sup>

#### IV. *Analysis of a Reasoned Approach to Internet Gambling*

##### A. *The Undercurrent*

Opponents of Internet gambling cite its litany of negative effects. These detractors posit that Internet gambling creates problems, such as youth gambling, compulsive gambling, bankruptcy increases, local crime increases, and destruction of local jobs.<sup>247</sup> At the same time, Internet gambling operators pay no taxes to help alleviate the effects of these problems.<sup>248</sup> Further, many say that even if Internet gambling could be regulated, it gives the community no appreciative social or economic benefits.<sup>249</sup> In fact, some studies indicate that communities will derive a net loss from Internet gambling because the tax revenues do not cover the costs of the social ills created.<sup>250</sup>

These Internet gambling opponents would rather see Internet gambling banned altogether.<sup>251</sup> However, such a bold initiative has one fatal flaw. The technology necessary to accomplish such a monumental task does not exist.<sup>252</sup> Proposed legislation like the IGPA, proposing a ban on Internet gambling,<sup>253</sup> and the UIGFPA, which proposes a ban on Internet gambling funding mechanisms,<sup>254</sup> may be counterproductive.<sup>255</sup> The technology already exists to circumvent both of these laws.<sup>256</sup> IGPA, UIGFPA, and similar legislation will simply drive the payment mechanisms to the highly encryptive electronic money protocol and

<sup>246</sup> See THE NEW DICTIONARY OF CULTURAL LITERACY, 3d. ed. (2002), available at <http://www.bartleby.com/59/3/ounceofpreve.html> (last visited June 13, 2004).

<sup>247</sup> See *infra* Part III.B.

<sup>248</sup> See *infra* Part III.B.

<sup>249</sup> See Kindt & Joy, *supra* note 145, at 125-31 (discussing the basic goals of land based gambling and how internet gambling undercuts said goals).

<sup>250</sup> See Kindt & Palchak, *supra* note 137 at 57-61 (discussing the negative impact of gambling on bankruptcies and tax revenues).

<sup>251</sup> See Kindt & Joy, *supra* note 145.

<sup>252</sup> See generally Batt, *supra* note 83 (Sen. John Ensign, R-Nev., stating that while he opposes Internet gambling, he has not seen a legislative proposal that would actually accomplish that goal).

<sup>253</sup> See *infra* Part II.B.

<sup>254</sup> See *infra* Part II.B.

<sup>255</sup> See Schopper, *supra* note 63, at 314-18 (discussing electronic money and its implications for Internet gambling).

<sup>256</sup> See *id.* at 322-27.

give the government less control over Internet gambling.<sup>257</sup> With the existing technological state of affairs, a general prohibition of Internet gambling simply is not feasible.<sup>258</sup>

### B. *Perceived Advantages*

On the state level, proponents of online gambling argue several points that favor legalization: (1) the Dormant Commerce Clause<sup>259</sup> may present an insurmountable challenge to the regulation of online gambling operations because such regulation appears to unduly burden interstate commerce, (2) some forty-eight states now have some form of legalized gambling,<sup>260</sup> (3) states are losing significant tax revenues,<sup>261</sup> (4) the Wire Act is problematic in interpretation and enforcement,<sup>262</sup> and (5) there are no viable technological mechanisms to prohibit Internet gambling transactions.<sup>263</sup>

The Commerce Clause of the United States Constitution<sup>264</sup> presents a formidable obstacle to the enforcement of any online gambling legislation put forth by any state.<sup>265</sup> The Commerce Clause gives Congress the sole authority to regulate commerce with foreign nations and between states.<sup>266</sup> The prohibition of online gambling may directly contravene the Commerce Clause because any state legislation would, by necessity, be broad enough to allow prosecution of out-of-state defendants, and would significantly entangle such states in the regulatory affairs of other states.<sup>267</sup> Because of the nature of the Internet, anyone who opens an online gambling website would have the potential of unwittingly dealing with residents of a state where online gambling is

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<sup>257</sup> See *id.* at 314-18.

<sup>258</sup> See *id.* at 327.

<sup>259</sup> See Bussinger, *supra* note 140.

<sup>260</sup> See *NGISC*, *supra* note 3.

<sup>261</sup> See Kindt & Palchak, *supra* note 137, at 57-61.

<sup>262</sup> See Thompson, *supra* note 14, at 90-91.

<sup>263</sup> See Batt, *supra* note 83.

<sup>264</sup> U.S. CONST. art. I, § 9, cl.3. "The Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes." *Id.*

<sup>265</sup> See Olson, *supra* note 162, at 2 ¶ 28.

<sup>266</sup> See *supra* note 264.

<sup>267</sup> See generally Olson, *supra* note 162 (analyzing many of the problems of state regulation of online gambling).

prohibited.<sup>268</sup>

Regulating online gambling is difficult because almost all states have some form of legalized gambling,<sup>269</sup> thereby providing gambling with an aura of moral credibility.<sup>270</sup> In addition, even the “moral” elements of society sometimes promote gambling. For example, churches may have raffles or bingo games, and even the Red Cross promotes its own lotto game.<sup>271</sup> This permissive culture of gambling makes it difficult, although not impossible,<sup>272</sup> to get the public to take moralistic arguments against gambling seriously.<sup>273</sup> For example, the national prohibition of alcohol from 1920 to 1933, designed to solve social problems, reduce crime and corruption, alleviate the tax burden created by prisons and shelters, and improve the health outlook in America, failed miserably to meet its objectives.<sup>274</sup> This effort highlights the deficiencies of prohibition programs.

The loss of tax revenues is another reason the legalization of online gambling is championed. Online gambling revenues will exceed 6.3 billion dollars by the year 2003.<sup>275</sup> These tax revenues are now going to offshore gambling operations.<sup>276</sup> The offshore gambling operations suck money out of a state, but add nothing to the cost of maintaining the state infrastructure and economy.<sup>277</sup> Brick-and-mortar operations have the positive effect of adding to the tax base, while unregulated Internet

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> See Goodman, *supra* note 139, at 375.

<sup>271</sup> See International Federation of Red Cross and Red Crescent Societies, PlayPLUS Lotto, <http://www.ifrc.org/helpnow/lotto.asp> (last visited Mar. 19, 2004).

<sup>272</sup> See Kirby Anderson, *Gambling*, <http://www.probe.org/docs/gambling.html> (last visited Mar. 19, 2004) (discussing the issue of gambling from an Evangelical Christian perspective).

<sup>273</sup> See Franklin, *supra* note 153 (stating that only Hawaii and Utah do not have some type of legalized gambling).

<sup>274</sup> See Mark Thornton, *Alcohol Prohibition Was a Failure*, CATO INSTITUTE, Cato Policy Analysis No. 157, July 17, 1991, at <http://www.cato.org/pubs/pas/pa-157es.html> (last visited Mar. 19, 2004).

<sup>275</sup> See Liz Benston, *Analyst Lowers Estimate for Online Gaming Industry*, LAS VEGAS SUN, Sept. 26, 2002, at <http://www.lasvegassun.com/sunbin/stories/gaming/2002/sep/26/514041645.html> (last visited Mar. 23, 2003) (estimating that revenues have been scaled back because of credit card accessibility concerns).

<sup>276</sup> See *generally* Hammer, *supra* note 16, at 117-19 (presenting the detrimental effect of unregulated Internet gambling on the collection of tax revenues).

<sup>277</sup> *Id.* at 119.



gambling operations create problems but add nothing to the tax base.<sup>278</sup>

Many Internet gambling proponents believe that the Wire Act is probably too limited to be of any real benefit in combating illegal online gambling. While it seems clear that the Wire Act will apply to gambling over “wire” communications,<sup>279</sup> there may be problems with it applying to “wireless” communications, such as cell phones and other wireless devices.<sup>280</sup> Such anachronistic language may make it necessary for new legislation to address the “wireless” problem, or leave this issue for the United States Supreme Court.<sup>281</sup> Further, the Wire Act, by its very language, limits its subject matter jurisdiction to sports betting.<sup>282</sup> The Act states:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the place of bets or wagers on any *sporting event or contest*, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.<sup>283</sup>

On its face, the Wire Act does not appear to apply to non-sports betting and, thus, would be ineffective in regulating most casino gambling operations.<sup>284</sup> Regardless, the most important reason for regulating Internet gambling, as opposed to prohibition of Internet gambling, is that it is not feasible to prevent it.<sup>285</sup> The numbers of Internet gambling sites continue to increase at a stupendous rate.<sup>286</sup>

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<sup>278</sup> *Id.*

<sup>279</sup> See *People v. World Interactive Gaming Corp*, 714 N. Y. S. 2d 844, 852 (1999) (commenting on the Wire Act being applicable to Internet gambling because the Internet is accessed through telephone lines).

<sup>280</sup> See generally Girdwood, *supra* note 236, at 142 (2002) (discussing the problems of the “wire” language in regards to “wireless” communications).

<sup>281</sup> *Id.*

<sup>282</sup> See *Mastercard*, 313 F.3d at 262, 263.

<sup>283</sup> 18 U.S.C. § 1804(a) (2003) (emphasis added).

<sup>284</sup> See *Mastercard*, 313 F.3d at 262.

<sup>285</sup> See *infra* Part IV.A.

<sup>286</sup> See *Cabot & Csoka*, *supra* note 10, at 2.

### C. *A Reasoned Approach*

#### 1. The Problem Defined

The inescapable fact is the reality that online gambling cannot be prevented.<sup>287</sup> Despite the fact that gambling is legalized in some form in 48 states,<sup>288</sup> illegal gambling is still the most abundant gambling in America.<sup>289</sup> Whether we like it or not, gambling has become ingrained in the American culture and the stark reality is that people like to gamble.<sup>290</sup> Further, even if there was a desire to prevent online gambling, the nature of the Internet presents such a myriad of jurisdictional and technological problems that preventing its existence appears to be insurmountable.<sup>291</sup>

Internet gambling operators have the ability, because of offshore operations, to continue to operate in the United States even if Internet gambling is prevented or regulated exclusively on a technological basis.<sup>292</sup> This is true regardless of whether the attempt to prohibit or regulate is on the federal or state level.<sup>293</sup> Further, as long as the Internet gambling market is dominated by relatively small operations with the ability to remain localized in one or very few international jurisdictions, a solution to the problem will likely remain unattainable.<sup>294</sup>

However, if the market becomes dominated by larger multinational corporations, all the rules change. Enforcement in jurisdictional matters, from the perspective of the gambling entity, generally involves business risk rather than legal risk.<sup>295</sup> Businesses must determine if they have enough local assets at risk of seizure, or whether they are too multi-jurisdictional to ignore any outstanding court order.<sup>296</sup> Small, localized, offshore Internet gambling operators have consistently been

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<sup>287</sup> See *infra* Part III.B.2.

<sup>288</sup> See *NGISC*, *supra* note 3.

<sup>289</sup> See *Gaming Attorneys*, *supra* note 148.

<sup>290</sup> See, e.g., Joshua Green, *The Bookie of Virtue*, WASH. MONTHLY, at <http://www.washingtonmonthly.com/features/2003/0306.green.html> (last visited Mar. 19, 2004). Even William Bennett, the author of the *Book of Virtues* and renown champion of Christian moral values is an admitted “high stakes” gambler. *Id.*

<sup>291</sup> See Lantzer, *supra* note 35; August, *supra* note 35; Geist, *supra* note 35.

<sup>292</sup> See generally Batt, *supra* note 83.

<sup>293</sup> See Fazekas, *supra* note 198.

<sup>294</sup> See generally Girdwood, *supra* note 236, at 144.

<sup>295</sup> See Geist, *supra* note 35, at 1355.

<sup>296</sup> *Id.*

able to thwart prosecution of sports betting under United States laws.<sup>297</sup> Large multi-national corporations cannot insulate themselves like these smaller companies because they must have bricks and mortar, people, equipment, and other assets in a varied number of physical locations.<sup>298</sup> These large companies cannot be exclusively “virtual” companies.

## 2. The Market Solution

### a. Branding and Market Influence

Attracting brand name, land-based casinos is the key to resolving the jurisdiction dilemma. A strong brand is an important aspect of the marketing of products.<sup>299</sup> Strong brands are more quickly recalled from memory and considered an option for purchase.<sup>300</sup> For example, if one were asked to name some carbonated beverages one would likely recall Coca Cola or Pepsi from memory, and have some relative preference or knowledge concerning each one.<sup>301</sup> Similarly, if a person were to name a gambling firm Harrah’s or Caesar’s Palace quickly come to mind. Brand effects have been influential in situations where consumers feel uncertain, such as when Internet gambling, where the customer may have no idea whom he or she is betting with, to whom the customer is sending money, or whether the customer will get paid if he wins.<sup>302</sup> In this situation, a strong brand may serve as an aid in deciding whether one option is better than others.

Brand recognition leads to source credibility, that is the extent to

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<sup>297</sup> See Cohen, *supra* note 39 (showing that even in the high profile sports betting case of Jay Cohen brought under the Wire Act the prosecution was only able to prosecute one of the partners of the World Sports Exchange offshore betting company, while other partners lived in Antigua without fear of prosecution and continued to operate a sports betting company targeting customers in the United States); see *Internet Gambling: U. S. Struggles to Cover the Spread*, MIAMI DAILY BUS. REV., Vol. 4, No. 1-30, at 3, Jan. 30, 2004.

<sup>298</sup> See Geist, *supra* note 35, at 1355.

<sup>299</sup> See Susan M. Broniarczyk & Joseph Alba, *The Importance of the Brand in Brand Extension*, J. MARKETING RESEARCH 214 (May 1994).

<sup>300</sup> See generally Itamar Simonson, Joel Huber & John Payne, *The Relationship Between Prior Brand Knowledge and Information Acquisition Order*, J. CONSUMER RES. 566 (Mar. 1988).

<sup>301</sup> See generally Yigang Pan and Donald R. Lehmann, *The Influence of New Brand Entry on Subjective Brand Judgments*, J. CONSUMER RES. 76 (June 1993).

<sup>302</sup> See generally Michael S. McCarthy et al., *New Brands Versus Brand Extensions, Attitudes Versus Choice: Experimental Evidence for Theory and Practice*, MARKETING LETTERS, Feb. 2001, at 75.

which a source is perceived to have expertise and believability.<sup>303</sup> Many American casino operations already have the brand name and the source credibility that should help them to move quickly to become dominant players in the Internet gambling market.<sup>304</sup> The concept of source credibility is extremely important in the behavioral sciences.<sup>305</sup> Source information assists our understanding as to why ideas are adopted and how choices are made.<sup>306</sup> In this case, the source effects provided by a well-known U.S.-based casino allows the gambler to transfer existing beliefs concerning the physical entity to the virtual entity.<sup>307</sup> For example, a visit to Sears.com quickly reveals that the Web store has much of the same merchandise as that offered at the physical location, the warranties are similar, and returns for most goods may be made at the physical store if a problem occurs.<sup>308</sup> In essence, the Internet serves as an additional channel of communication and purchase for the existing physical entity. The power of the firm's brand name lends this level of credibility and allows the firm to easily enter into a new communication arena without the need to inform and educate individuals concerning the company's trustworthiness.<sup>309</sup>

If the U.S.-based casinos can use their source credibility to become established as the market leaders for Internet gambling, they will be poised to influence its competitors, the offshore Internet gambling operators.<sup>310</sup> Market leaders can signal behavior in the marketplace by announcing that they plan to enter into a new market.<sup>311</sup> Market signals are announcements and actions that firms make that convey information

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<sup>303</sup> See JOHN C. MOWEN, CONSUMER BEHAVIOR 378-87 (4th ed., Prentice Hall 1994).

<sup>304</sup> See generally David A. Aaker & Kevin Lane Keller, *Consumer Evaluations of Brand Extensions*, J. OF MARKETING, Jan. 1990.

<sup>305</sup> See CARL I. HOVLAND ET AL., COMMUNICATION AND PERSUASION PSYCHOLOGICAL STUDIES OF OPINION CHANGE (1953) (synthesizing the findings of numerous studies of the credibility dimensions of expertise and trustworthiness).

<sup>306</sup> *Id.*

<sup>307</sup> See generally Douglas A. Fuchs, *Two Source Effects in Magazine Advertising*, J. OF MARKETING RESEARCH, Aug. 1964, at 59 (discussing attitude formation and the ability to transfer attitudes that already exist for the source to the product itself).

<sup>308</sup> See *Sears Policies*, available at [http://www.sears.com/sr/framework/home.jsp?BV\\_UseBVCookie=Yes&vertical=SEARS&targetPage=%2Fmisc%2Fsears%2Fpolicy%2Fterms.jsp](http://www.sears.com/sr/framework/home.jsp?BV_UseBVCookie=Yes&vertical=SEARS&targetPage=%2Fmisc%2Fsears%2Fpolicy%2Fterms.jsp) (last visited Apr. 12, 2004).

<sup>309</sup> See Aaker & Keller, *supra* note 304.

<sup>310</sup> See Michael Kaplan, *An Offshore Bet*, CIGAR AFICIONADO, Feb. 2004, at 114.

<sup>311</sup> See generally Jaideep Prabhu & David W. Stewart, *Signaling Strategies in Competitive Interaction: Building Reputations and Hiding the Truth*, J. MARKETING RES. 62 (Feb. 2001).

about themselves to various constituencies, including, customers, suppliers, regulators and competitors.<sup>312</sup> Other firms in the industry will take these signals, as well as the signaling firm's reputation concerning past signaling behavior into account, and make decisions accordingly. Signals can be sent for any number of reasons including the need for cooperation among competitors to establish standards.<sup>313</sup> For example, if the Internet gambling market leaders established online programs to identify and preclude youth and compulsive gamblers to maintain good business, public and government relations, then the offshore Internet gambling operators may have to do the same in order to maintain market credibility.

#### b. Benefits to Internet Gambling Operators

First and foremost, regulatory legislation would make Internet gambling operations legal, and would therefore afford them law enforcement protection. For example, extortionists have swamped gambling sites with large volumes of traffic that has caused the servers to crash for days at a time.<sup>314</sup> The extortionists then sell "insurance" so that it will not reoccur.<sup>315</sup> By registering with the government, Internet gambling operators would have the U.S. government's assistance in dealing with this and other criminal intrusions.<sup>316</sup>

Another benefit is that U.S.-based Internet gambling operators would be able to effectively enter a new market, generating revenue and providing direct competition to the offshore operators. Further, the entry costs to Internet gambling are miniscule relative to brick-and-mortar gambling operations.<sup>317</sup> Since some American companies have already built their Internet infrastructure, their additional costs would be

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<sup>312</sup> See *id.* at 119.

<sup>313</sup> See generally Samuel Rabino and Thomas E. Moore, *Managing New-Product Announcements in the Computer Industry*, INDUS. MARKETING MGMT., Feb. 1989, at 35.

<sup>314</sup> See generally Paul Roberts, *Super Bowl Fuels Gambling Sites' Extortion Fears—Online Sports Sites Worried by Plague of Denial-of-Service Attacks*, INFOWORLD, at [http://www.infoworld.com/article/04/01/29/HNsuperbowl\\_1.html](http://www.infoworld.com/article/04/01/29/HNsuperbowl_1.html) (last visited Mar. 17, 2004).

<sup>315</sup> *Id.*

<sup>316</sup> See Ian Mylchreest, *Feds Are Deadly Serious About Funny Money*, LAS VEGAS BUS. PRESS, July 21, 2003, at 2.

<sup>317</sup> See *infra* Part III.B.1.a; See generally JUDY ADEL-ANSARY STRAUSS & RAYMOND FROST, *E-MARKETING* (3d ed. 2003).

nominal.<sup>318</sup>

Finally, U.S.-based Internet gambling operations may be able to integrate Internet gambling with Internet marketing in order to enhance tourism and travel to the land-based casinos.<sup>319</sup> Without the legalization of Internet gambling, such integration is not likely.<sup>320</sup> However, land-based companies have a financial incentive to promote tourism.<sup>321</sup> Tourism concerns automatically make land-based companies interested in jobs and local crime.<sup>322</sup>

## V. Conclusion

One of the benefits of the Federal and state governments acquiring jurisdiction over the United States land-based casino operators is that it gives them the opportunity to exert influence over issues such as vulnerable consumers, bankruptcies, online fraud, local crime, tourism and local jobs. Further, governments will be able to collect taxes on new revenues that can help pay for programs to deal with the social ills created by Internet gambling. Because Internet gambling is already a reality, many of these social problems already exist.

Legalization of Internet gambling removes the incentive to move the funding of Internet gambling to harder-to-trace formats, such as electronic money. This will make it more difficult to launder money

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<sup>318</sup> *United Online Says Net Income Soars*, L.A. TIMES, Feb. 5, 2004 at C3 (stating that Harrah's net income decreased because of \$16 million in startup costs for its Internet gambling site).

<sup>319</sup> See generally Girdwood, *supra* note 236, at 138-39.

<sup>320</sup> See Matt Richtel, *U.S. Threatens Action Against Online Gambling*, N.Y. TIMES, Mar. 15, 2004, at 1 (discussing the federal government's investigation of media, public relations and technology companies for providing advertising and other collateral services to the Internet gambling industry and the government's serious intent on enforcing Internet gambling laws).

<sup>321</sup> See John Duvoli, *Casino Gambling Will Draw Development and Tourism to the Valley*, HUDSON VALLEY BUS. J., Sept. 25-Oct. 9, 2000, at 8; see generally Bruce Miller, *Study Shows 1 in 5 Marylanders Hit a Casino*, THE DAILY RECORD (Baltimore), available at [http://web.lexisnexis.com/universe/document?\\_m=8b99723c43a6b98d5abf2ecdd8c3fcf2&\\_docnum=11&wchp=dGLbVtz-zSkVb&\\_md5=bc44899c6c91548e3cad72ede04637a4](http://web.lexisnexis.com/universe/document?_m=8b99723c43a6b98d5abf2ecdd8c3fcf2&_docnum=11&wchp=dGLbVtz-zSkVb&_md5=bc44899c6c91548e3cad72ede04637a4) (last visited July 6, 2004) (discussing a study commissioned by Harrah's showing that land-based gambling attracts gamblers and creates tourism).

<sup>322</sup> See John Duvoli, *Assemblyman Says: Sullivan, Ulster Casinos Won't Bring Feared Crime, Prostitution and Drugs*, HUDSON VALLEY BUS. J., July 25, 1995, at 27; Cory Aronovitz, *Gaming Law Symposium: The Regulation of Commercial Gaming*, 5 CHAP. L. REV. 181, 182-88 (discussing the economic and social benefits land-based gambling brings to communities).

through Internet gambling.

The federal and state governments should seek to regulate, not prohibit, online gambling. Using the tobacco model, the government could choose to tax gambling to pay for developing programs to curtail some of the perceived social ills of gambling. The government should impose criminal penalties on unauthorized online gambling business operations. Internet gambling operations should be required to register with national and state gaming boards. Licensing fees and taxes could be levied and paid to the national and state governments. The taxes should give the gambling industry a reason to self-report on illegal gambling. The criminal penalties would give the government the power to adequately punish the violators. In this manner, gamblers would pay for preventing and treating the social ills of gambling, taking that burden off the public in general.

Internet Gambling cannot be prevented. But it can be regulated if multinational casinos dominate the Internet gambling market. By acquiring jurisdiction over the multinational Internet gambling operators and using government policy to influence the behavior of these multinational Internet gambling operators, the government may be able to influence the behavior of the entire Internet gambling market to the benefit of the American society. Social ills can be mitigated, and the costs of the remaining social ills will be paid by the portion of the public that actually gambles.