

WORLD WIDE WAGER: THE FEASIBILITY OF INTERNET GAMBLING REGULATION

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In 1919, eight men did the unimaginable . . . they sacrificed the integrity of the World Series for the sake of greed.² With the odds stacked against the Cincinnati Reds, several bookmakers and professional gamblers allegedly seized the opportunity to wager against the presumably undefeatable Chicago White Sox while ensuring a healthy pay-off.³ The collaborators provided a monetary incentive to several starters of the White Sox sufficient to ensure an unbelievable upset.⁴ History would later christen those conspiratorial players the "Black Sox."⁵ Today, both players and spectators have the means to engage in far more profitable ventures through the Internet, and no one, not even a single bookmaker, would need learn of the scheme.⁶ Although baseball's an-

¹*Juris Doctorate* anticipated May 1998 Seton Hall University School of Law. The author would like to thank Professor Howard M. Erichson, Professor Dan L. Burk, and Kenneth Spassione, Esquire for their assistance on this Comment.

²See Craig Carlson, *The Eight Men: Who Were They?*, (last visited April 14, 1998) <<http://www.blackbetsy.com/soxplayr.html>>.

³See *id.*

⁴See *id.*

⁵See *id.*

⁶See, e.g., B.G. Brooks, *It's Sure Bet NFL Worried About Cyberspace Wagers*, ROCKY MTN. NEWS, Jan. 24, 1998, at 26N, available in 1998 WL 7922930 (reporting that the NFL Commissioner, Paul Tagliabue, is concerned with the ability to enforce policies against "league personnel wagering on league games" via the Internet); see also Greg Couch, *NCAA Bets on Reforms, Colleges Try to Catch up with Epidemic of Athletes Placing Wagers on Sports*, CHI. SUN-TIMES, Sept. 30, 1997, at 87, available in 1997 WL 6371477 (explaining that the "epidemic" of college athletes engaging in sports gambling leading to point shaving is due in part to the fact that 4 percent of athletes bet on games they play in, often from their own dorm rooms). NFL and NCAA officials have expressed serious concern over the ability of athletes to use the Internet from their homes to place wagers on games they will be playing in the same day. Moreover, the increasing amount of sports gambling occurring on the Internet has continued to threaten the integrity of organized athletics due to the substantial monetary benefits which may accrue and the virtual anonymity the Internet offers gam-

swer in 1920 was the appointment of a Commissioner with powerful oversight authority, the Internet's seemingly untamable reach may prove to be a formidable adversary to sports and casino gambling regulators alike. Regulation of gambling has been a recurring pastime of elected officials and administrative agencies in the United States and throughout the world for many years.⁷ Governments have regularly relied upon the need for regulation to protect citizens from the perceived harms associated with wagering, such as indebtedness, fraud, and addiction.⁸ Additionally, regulations are often promulgated to ensure that these industries purchase costly gaming licenses and produce healthy tax revenues.⁹ In the United States, casino style gambling, including games such as roulette, poker, blackjack and slot machines, has been granted limited development in specific cities, Native American lands, and on various bodies of water, whereas sports gambling has been permitted in numerous regions but limited to horse racing, dog racing, and jai alai.¹⁰ Until recently, illegal bookmakers had a captive audience for many gambling pursuits not sanctioned under local law. The Internet, however, has created an outlet for sports gambling as well as casino style gambling far beyond what a local bookie can offer and far less expensive than a vacation to Reno.¹¹ Moreover, the Internet's gam-

blers. *See id.*

⁷See Scott M. Montpas, *Gambling On-line: For a Hundred Dollars, I Bet You Government Regulation Will Not Stop the Newest Form of Gambling*, 22 U. DAYTON L. REV. 163, 165-67 (1996).

⁸See Steven Crist, *All Bets Are Off*, SPORTS ILLUSTRATED, Jan. 26, 1998, at 82, 90-91, available in 1998 WL 8979198 (discussing the existence of on-line links to Gamblers Anonymous from certain Internet web pages).

⁹See, e.g., Charles W. Blau, *Tax Treatment of Gambling* (A.B.A. CENTER FOR CONTINUING LEGAL EDUCATION NATIONAL INSTITUTE) Apr. 17-18, 1997, available in Westlaw, N97GENB ABA-LGLED E-51, 73; see also Jeri Clausing, *Ban On Gambling? Australia Would Rather Tax It*, NY TIMES, Oct. 16, 1997.

¹⁰See Jeremy Robert Kriegel, *Place Your Bets on the Constitutionality of Riverboat Gambling Acts: Do They Violate the Commerce Clause?*, 47 WASH. U. J. URB. & CONTEMP. L. 123, 123-24 (1995); Montpas, *supra* note 7, at 165-66; Kathleen M. O'Sullivan, *What Would John Marshall Say? Does the Federal Trust Responsibility Protect Tribal Gambling Revenue?*, 84 GEO. L.J. 123, 123-24 (1995). Note that jai alai is "[a] game like hand ball, popular in Latin America: it is played with a curved basket (cesta) fastened to the arm, for catching the ball and hurling it against the wall." WEBSTER'S NEW WORLD DICTIONARY 721 (3d College ed. 1994).

¹¹See Mark Fineman, *"Virtual Casinos" Cash in on Lax Rules in Antigua*, L.A. TIMES, Sept. 21, 1997 at A1; *Gaming Lottery Set to Open GalaxiWorld Internet Casino by Late April 1998*, BUSINESS WIRE, Jan. 5, 1998. Gambling on the Internet offers at-home enter-

bling opportunities are often advertised under the guise of legality, yet they are everything but.¹²

The purpose of this Comment is to explain the developing law of Cyberspace gambling.¹³ Part I of this Comment traces the origins of the Internet and the recent growth in the Internet gambling phenomenon. Part II illustrates the gambling process via the Internet while Part III surveys the states' attempts to solve Internet gambling problems and the jurisdictional obstacles associated therewith. Part IV examines the proposed amendments to the United States Code and the suitability of those changes to the law, as well as significant enforcement problems. Finally, Part V addresses possible alternatives both international and domestic, as well as, describing the concerns associated with legislating a medium which is international in scope and the future of Internet gambling regulation.

I. A BRIEF OVERVIEW OF THE INTERNET

The Internet was developed by universities, defense contractors and the military throughout the world to expedite and economize defense research.¹⁴

tainment with virtually all of the same gaming formats available in casinos and at horse tracks and many forms of gambling such as wagering on major sporting events. *Id.* However, some believe that the gambling in Cyberspace will fail to entice many gamblers due to the lack of complimentary services, lack of noise and crowds which may add to the excitement of traditional casinos, and the inability for high rollers to flaunt their winnings. See Nicholas W. Allard and David A. Kass, *Law and Order in Cyberspace: Washington Report*, 19 HASTINGS COMM. & ENT. L.J. 563, 609 (1997).

¹²In *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 717 (Minn. Ct. App. 1997), the court implied that the mere advertising of a gambling service through an internet web page accessible to a state's citizens, may imply that the activity is legal there.

¹³Although this Comment may, at first glance, seem to criticize the gambling industry, it has been drafted to assist in the understanding of the legal developments and continuing dilemmas of the activity on the Internet. A debate of the merits of restricting or legalizing casino or sports gambling is not the focus of this Comment. However, select critics argue that wagering on athletics is no different than purchasing securities. See Crist, *supra* note 8, at 84 (arguing that "the difference between wagering and commerce 'lies neither in pleasure nor in profit but in the amount of social stigma attached to the process'") (quoting gambling historian Richard Sasuly). Neither viewpoint would impact the applicability of existing federal, state or international regulations or those pending. Rather, the issue here is whether conventional regulations are sufficiently progressive to monitor and enforce gambling regulations on the Internet.

¹⁴See *ACLU v. Reno*, 929 F. Supp. 824 (E.D. Pa. 1996) (challenging the validity of the Communications Decency Act of 1996), *aff'd*, 117 S. Ct. 2329 (1997). In that opinion, Chief Circuit Judge Sloviter, presiding over a special three judge panel of the district court convened pursuant to 47 U.S.C. § 561(a) (West 1998) and 28 U.S.C. § 2284 (West 1998),

What began as a small experiment has now become one of the most influential developments in communication technology of the twentieth century.¹⁵ No single technological advancement has been able to unite people and ideas so efficiently; enabling entire libraries of information to be accessed with the click of a mouse.¹⁶ The creation of the World Wide Web has, in large part, changed the way in which much of the world's population conducts themselves in both their public and private affairs. The Internet, in particular, has had a profound impact on global commerce, far exceeding its initial dedication to military and

expounded upon the creation of the Internet, explaining that:

The Internet had its origins in 1969 as an experimental project of the Advanced Research Project Agency ("ARPA"), and was called ARPANET. This network linked computers and computer networks owned by the military, defense contractors, and university laboratories conducting defense-related research. The network later allowed researchers across the country to access directly and to use extremely powerful supercomputers located at a few key universities and laboratories. As it evolved far beyond its research origins in the United States to encompass universities, corporations, and people around the world, the ARPANET came to be called the "DARPA Internet," and finally just the "Internet."

Id. at 831. Additionally, other networks were soon established and inter-linked with ARPA's Internet, thus realizing the modern concept of the Internet. *See id.* at 832. Across the Atlantic, the European Particles Laboratory created the World Wide Web (the "Web" or "W3C"). *See id.* The Web allowed the user more easy access through the use of "hyperlinks," a system of interconnected Internet addresses which connect documents, images and multimedia. *See id.* at 836. Today, these various, interconnected computer systems are often collectively referred to as either "Cyberspace," the "Internet," the "Net," the "World Wide Web," or the "Web." *See id.* at 830-36.

¹⁵*See id.* In 1996, approximately 40 million Internet users access the Net worldwide and by 1999 there will probably be over 200 million users. *See id.* at 831. Moreover, of the estimated 9,400,000 host computers worldwide, approximately 60 percent are located within the United States. *See id.* In addition, the Supreme Court noted that while many users gain access to the Internet through schools or employers, those who are not afforded such opportunities need not be deprived as there are many "free-nets" in community buildings, such as libraries. *See id.* at 832-33. *See also, Internet Business Traffic Booming*, ASBURY PARK PRESS, Apr. 16, 1998, at A4 (noting a recent report from the Commerce Department indicated that "[t]raffic on the Internet is doubling every 100 days").

¹⁶"The web was designed with a maximum target time to follow a link of one tenth of a second." *ACLU*, 929 F. Supp. at 837. Furthermore, the Internet is capable of sending the same data through thousands of different pathways at one time, thus eliminating the potential loss of data if one or more routes fail. *See Marc D. Goodman, Why the Police Don't Care About Computer Crime*, 10 HARV. J.L. & TECH. 465, 483 (1997) (explaining that the military architected the Internet to withstand a nuclear war).

scientific applications.¹⁷ Despite the Internet's magnificent power to enhance global communication, it has also proven to be a proficient instrument in evading existing rules and regulations as a result of its unique ability to circumvent blocking mechanisms and contravene tracking techniques of law enforcement.¹⁸ Common examples of the growing number of Web based crimes are fraud, computer theft, trademark infringement and sexual assault, yet at the heart of this alleged cyber-crime wave lies a commercial enterprise rapidly invading homes and business across the world, the Cyberspace gaming industry.¹⁹

¹⁷See generally Mark Sableman, *Business on the Internet, Part I: Jurisdiction*, 53 J. MO. B. 137, 137 (1997) (stating that "many businesses have rushed to take advantage of the Internet as a means to advertise goods and services. Almost all of the largest United States corporations, and a strong majority of the world's biggest firms, have already posted sites on the World Wide Web"); see also generally, William Sloan Coats and Heather D. Rafter, *From Stoning to Spamming: Regulation of Advertising on the Internet*, 1003 PLI/Corp 93, 97 (1997) (indicating that "[e]stimated revenues from advertising on the Internet was \$301 million in 1996").

¹⁸See, e.g., *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997) (involving trademark infringement through the use of a domain name); *United States v. Thomas*, 1196 WL 767431 (D. Minn.), *aff'd*, 74 F.3d 701 (6th Cir. 1996) (convicting an Internet user for setting up a web site for the purpose of selling pornography); Blake T. Bildstad, *Obscenity and Indecency in a Digital Age: The Legal and Political Implications of Cybersmut, Virtual Pornography, and The Communications Decency Act of 1996*, 13 SANTA CLARA COMPUTER & HIGH TECH. L.J. 321, 323-26 (1997) (providing a discussion of how the Internet is used by many for unlawful sexual gratification, hate, violence, crimes against children, and breaches of privacy); Marc S. Friedman and Kristin Bissinger, *Infojacking: Crimes on the Information Superhighway*, 9 NO. 5 J. PROPRIETARY RTS. 2, 2 (1997) (depicting a growing trend of Internet based crimes including treason, industrial espionage, sexual assault, and fraud); Goodman, *supra* note 16, at 466 (proffering the reality of an ongoing "world war" of computer crime); Sally M. Abel and Connie L. Ellerbach, *Trademark Issues in Cyberspace: The Brave Frontier* (Nov. 7, 1997) <<http://www.fenwick.com/pub/cyber.html>> (furnishing an in depth analysis of trademark violations on the Internet); Jon Jefferson, *Deleting Cybercrooks*, 83 A.B.A. J. 68, 69 (1997) (discussing the inability of laws to adequately deal with Cyberspace crimes).

¹⁹See generally *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 716-17 (Minn. Ct. App. 1997) (upholding jurisdiction in the case of a Nevada Corporation which advertised an imminent on-line bookmaking service on the Internet in violation of Minnesota laws against unfair trade practices, consumer fraud, and false advertising); Allard and Kass, *supra* note 11, at 609-10 (discussing the pervasive spread of gaming Web sites despite significant legal and financial ambiguity); Seth Gorman and Antony Loo, *Blackjack or Bust: Can U.S. Law Stop Internet Gambling?*, 16 LOY. L.A. ENT. L.J. 667, 668 (1996) (speculating that Internet gambling "could produce as much as ten billion dollars in revenue from the United States alone"); Montpas, *supra* note 7, at 163-65 (arguing that the enormous profits being derived from Internet gambling and its global nature frustrate attempts at regulation); Couch, *supra* note 6, at 87 (articulating the growing trend of NCAA athletes placing wagers, often on games they are playing in, from their dorm rooms via the Internet); Crist,

It is difficult to determine precisely how many Internet web pages are dedicated to on-line gambling services. Conservative estimates place the number at fewer than fifty, while more liberal reports suggest there may be more than 200 sites currently on the Web.²⁰ Gambling web sites collectively book billions of dollars in wagers annually and those amounts are expected to increase dramatically within the next few years.²¹ Despite the apparent economic success of the industry, odds are that the growth may level off sooner than originally expected as American participation is abrogated. The United States is currently attempting to collapse this thriving, although controversial, industry with sweeping legislation intended to amend the federal Interstate Wire Act.²² The new legislation would explicitly prohibit on-line gambling throughout the

supra note 8, at 82, 84-85 (depicting the growing American pastime of Internet sports betting); *CompuServe's Interest May Aid Gambling*, INTERNET WK., Sept. 29, 1997, available in 1997 WL 8527744 (indicating the company's interest in entering the on-line gambling market with the possibility of operating offshore if U.S. domestic law seeks to prohibit it); *Dominican Republic: Phone Gambling Industry Grows*, CARIBBEAN UPDATE, Oct. 1, 1997, available in 1997 WL 8654643 (indicating the rising role of Caribbean islands as popular domiciles for licensing gaming Web pages); *Internet Gambling Soon to Become a 25-billion-dollar Industry*, AGENCE FRANCE-PRESSE, Oct. 1, 1997, available in 1997 WL 13405120 (reporting on a release from the Chicago Crime Commission stating that by the year 2000, on-line gambling will reach 25 billion dollars annually); Leslie Gornstein, *The Web: Online Casinos a Gamble*, ORANGE COUNTY REGISTER, Oct. 12, 1997, at K08, available in 1997 WL 14878556 (indicating that on-line gambling accounts for 50 percent of all gambling revenues in the United States and Canada).

²⁰See generally *Internet Gambling Soon to Become a 25-billion-dollar Industry*, *supra* note 19 (estimating that by the turn of the century, on-line gambling will likely be a \$25 billion industry); Crist, *supra* note 8, at 85 ("[A] \$60 million business in 1996 will handle \$600 million in bets in '98, with another tenfold increase likely by 2001. In '96 only two on-line sites handled sports bets; now there are at least 50."); Don Pierson, *Tangled Web of Gambling Internet Betting Has NFL Scared*, CHI. TRIB., Dec. 25, 1997, at 1, available in 1997 WL 16806287 (explaining that by the turn of the century, gambling on-line may reach \$8.6 billion worldwide); L.A. Lorek, *Boca Software Company Seeks Higher Stock Listing*, SUN-SENTINEL, Oct. 2, 1997, at 3D, available in 1997 WL 11405290 (explaining that in one year, the number of gambling sites rose from less than 20 to more than 200); *Executive Summary of Internet Gambling Report*, 1996-JUNE NAAGGDB 12 (indicating that "[t]here are hundreds of gambling-related sites on the Internet; dozens more being added monthly."); Bill Pietrucha, *Internet Gambling Law Symposium Set for November*, NEWSBYTES, Oct. 9, 1997, available in 1997 WL 13911748 (reporting that analysts predict that gambling on-line will be a \$10 billion industry by the end of the century).

²¹See *Internet Gambling Soon to Become a 25-billion-dollar Industry*, *supra* note 19.

²²See 18 U.S.C. §§ 1081 and 1084 (West 1998). See *infra* notes 159-173 and accompanying text for a discussion of the proposed legislation.

United States.²³ The sponsors hope that this legislation will halt an industry which expects to reap billions of dollars in profits from United States consumers annually.²⁴

II. GAMBLING ON THE INTERNET

In order to place a bet on next Sunday's game, first log on to an Internet provider, select a search engine,²⁵ and type in 'gamble,' 'wager,' 'casino,' 'gaming,' 'betting,' 'bet,' or 'gambling,' and run the search.²⁶ After scanning the resulting list of ten to twenty web site domain names or identifiers, and eliminating the four or five inapplicable choices, select one which appears to offer an opportunity to wager. Typically, if the web page selected is an on-line gambling provider, it will provide some cautionary legal language that will ad-

²³See *Internet Gambling Legislation Introduced on Capitol Hill*, 13 NO. 12 COMPUTER L. STRATEGIST 6 (1997) (reporting the introduction of the "Internet Gambling Prohibition Act of 1997" on March 19, 1997); Allard and Kass, *supra* note 11, at 609-13 (discussing the proposed federal legislation and potential concerns involved in regulating Internet gambling). Numerous states have already promulgated regulations which prohibit Internet gambling; however, jurisdictional dilemmas create enforcement problems. See *infra* Part III, notes 56-158 and accompanying text; see also Gorman and Loo, *supra* note 19, at 668 (indicating that Internet casinos value the United States market potential at \$10,000,000,000). Note that the use of the term "explicitly" is in reference to the fact that the Interstate Wire Act already prohibits the use of telephone lines in taking wagers across state lines, thus the proposed amendment is intended to leave no loop hole with respect to the Internet. See 18 U.S.C. § 1084 (West 1998). Moreover, theorists have pointed to other federal statutes which may also prohibit Internet gambling such as 18 U.S.C. § 1301 (West 1998) (prohibiting the transport of lottery tickets across state lines), 18 U.S.C. § 1953 (West 1998) (barring the transport of gambling paraphernalia across state lines), 18 U.S.C. § 1955 (West 1998) (prohibiting participation in certain gambling operations), and even 18 U.S.C. § 1961-1963 (West 1998) (RICO). See also Kristen D. Adams, *Interstate Gambling-Can States Stop the Run for the Border?*, 44 EMORY L.J. 1025, 1027-28 (1995); Harley J. Goldstein, *On-line Gambling: Down to the Wire?*, 8 MARQ. SPORTS L.J. 1, 18-20 (1997).

²⁴See David Braun, *Don't Bet on Internet Gambling*, TECHWEB NEWS, Nov. 24, 1997 (Mar. 16, 1998) <<http://www.techweb.com/wire/news/1997/1124gambling1.html>>

²⁵See Coats and Rafter, *supra* note 17, at 101 (explaining that the search engines Yahoo!, Infoseek, Lycos, and Excite are responsible for Internet advertising "revenues ranging from \$20.6 million to \$12.2 million respectively").

²⁶Using a search engine to run a search for certain terms is known as a key word search. See, e.g., Galen A. Grimes, 10 MINUTE GUIDE TO NETSCAPE FOR WINDOWS 95 at 41-44 (1995). It enables a user to type in a word or group of words describing the desired topic and attempts to match the words with all web sites in its database and then provides a list of web sites. See *id.*

wise the user to consult their local law before placing any bets.²⁷

Next, the web page may either provide the user with a phone number to use in placing bets within a jurisdiction which permits gambling²⁸ or it may enable a user to wager directly through the Internet, in which case it will ask the user to open an account.²⁹ Web sites frequently require a person to open an account with a minimum deposit prior to placing any bets.³⁰ The web page will ask for wired funds, money orders, or cash advances from a major credit card to establish a personal account.³¹ Once the web site provider has acknowledged receipt of a deposit, often taking less than fifteen minutes, a user may begin placing bets immediately.³² One site estimated that they have the ability to, and often do, take over 250 bets per second.³³ Winnings are typically placed into the subscriber's account for continued wagering or may be removed via money

²⁷See *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d. 715, 717 (Minn. Ct. App. 1997) (explaining that the WagerNet site would warn potential users to consult "local authorities regarding restrictions" prior to registration).

²⁸See 18 U.S.C. § 1084(a) (West 1998). This form of gambling is already illegal under 18 U.S.C. §§ 1081 and 1084 (West 1998). Title 18 of the United States Code, section 1084(a), states that:

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 . . . shall be fined under this title or imprisoned . . .

Id. Thus, any gamble service provider who accepted a bet over the phone would be in violation of this statute, although a person placing the wager would not because the law applies to those "in the business" of gambling. *See id.*

²⁹See *Granite Gate Resorts, Inc.*, 568 N.W.2d. at 717-18. This form of gambling is intended to be the focal point of the amendments to 18 U.S.C. §§ 1081 and 1084. *See infra* notes 159-173 and accompanying text discussing the proposed legislation.

³⁰See Crist, *supra* note 8, at 90 (indicating that most on-line gaming services "require a minimum deposit of between \$300 and \$600").

³¹*See id.*

³²*See id.*

³³*See id.*; *see also* Benjamin Weiser, *U.S. Charges 14 With Online Sports Betting Operations*, N.Y. TIMES, Mar. 5, 1998 (noting that 1998 Super Bowl betting alone accounted for approximately 40,000 on-line bets).

order, wire transfer, or sent by courier.³⁴

The web pages are often owned by individuals and small organizations who have invested between one and two hundred thousand dollars in the equipment and licensing.³⁵ Other providers are associated with global entertainment moguls with hundreds of millions in assets.³⁶ Depending upon where the site is

³⁴See Crist, *supra* note 8, at 90. Many prosecutors argue that this system provides ample opportunity to launder money offshore through the use of zero-sum gambling. See *id.* at 86.

If you want to launder money, this is the way to do it. It's not hard. Bet on Florida and bet on Georgia (when they play each other). If you structure the bets properly, all you pay is the vigorish for the ability to create profits that are offshore and invisible, or to create losses that you can declare. Basically, you have a money transfer because one side's going to lose, one side's going to win and pay double. Now dirty money appears clean.

Id. (quoting Jonathan M. Winer of the State Department); see also *Money Laundering Hotline*, 8 NO. 5 MONEY LAUNDERING L. REP. 2 (1997) (noting the proposed amendment to federal law to criminalize on-line gambling); Blau, *supra* note 9, at 73 (depicting two federal cases in which money laundering convictions were upheld where gambling was used to convert funds).

³⁵See Crist, *supra* note 8, at 88-90.

³⁶See generally Thomas E. Weber, *On-Line: Idaho Tribe Uses Loophole to Put Gaming on Web*, WALL ST. J., Feb. 4, 1998, at B1 (noting that the Coeur d'Alene tribe has set up an on-line lottery); *USAG-WWW Casinos Merger Craps Out*, MULTIMEDIA DAILY, Jan. 30, 1998, available in 1998 WL 6568682 (indicating that merger agreement had been terminated between World Wide Web Casinos, Inc. and USA Growth, Inc., but that USA Growth, Inc. would continue to seek other investments in the Internet gambling arena); *Gaming Lottery Corporation Set to Open GalaxiWorld Internet Casino by Late April 1998*, BUS. WIRE, Jan. 5, 1998 (revealing the imminent opening of "the most advanced Internet casino ever created, offering 52 casino games including all of the most popular games such as blackjack, poker, roulette, video poker, lotteries, keno and slot machines," created with an investment of over 25 million dollars); Crist, *supra* note 8, at 88, 90 (describing two partners, formerly stock traders, who moved to Antigua to set up the World Sports Exchange and indicating that "necessary equipment and software to set up a site run as little as \$135,000, and operating costs are roughly the same whether you have 50 or 5,000 customers"); Lorek, *supra* note 21, at 3D (noting a significant increase in sales over the past year of Internet gambling software manufacturer); *News Clippings*, 1997-AUG NAAGDB 3 (reporting that "Microsoft, Sega, and America Online are investing heavily" in online gaming); *CompuServe's Interest May Aid Gambling*, *supra* note 19 (indicating that CompuServe has expressed interest in entering the on-line gaming market but, will consider establishing a web site outside of the United States if the law deems it necessary); Nelson Rose, *State Lotteries on the Internet?*, ANDREWS GAMING INDUS. LITIG. REP. 10 (May 1997) (noting that Finland has created a state lottery which may be played through the Internet so long as a player has a bank account in Finland, while Liechtenstein has established an Internet lottery which permit players from

located, various countries require a license to open a web site, others require that a bond be placed with the local gaming commission to ensure that winnings are paid, and many require both.³⁷ The reliability of these controls might be called into question in light of the fact that the average amount of a bond is often greatly exceeded by the amount of winnings disbursed within the first few days of operation.³⁸ Therefore, the issue becomes how governments can implement regulations to control this growing phenomenon and whether the power to enforce the regulations exists.³⁹

When a user logs onto the Web and hyperlinks to a web page,⁴⁰ the page is then displayed on the user's own monitor and the user gains access to the web page at the location of the site as if present within the host's jurisdiction.⁴¹

around the world to join in, so long as they are not nationals from Switzerland or Austria, who are banned from playing due to domestic laws pertaining to those subscribers); *First Entertainment Unit Gets Dominica Gaming License—FTET*, DOW JONES NEWS SERV. (Dec. 17, 1997) (reporting that a subsidiary of a large holding corporation has obtained a license to set up a gaming web page in the Commonwealth of Dominica, but interestingly, when it goes on line it will likely exclude United States Citizens until the United States legalizes Internet gambling).

³⁷See Crist, *supra* note 8, at 88 (explaining that “[i]n Antigua. . . Internet sports books must pay an annual licensing fee of between \$50,000 and \$75,000, undergo rigorous personal and credit investigations, and post bonds, some as high as \$500,000, to ensure they can pay off winners” and by January of 1998 already 26 sites had become licensed for on-line gambling by that country); see also *Criminal Law—Gambling: State Indictment of Internet Casino Highlights Online Jurisdiction Issues*, 66 USLW 2054 (July 22, 1997) (depicting a growing trend for Internet gambling providers to seek out licenses from foreign jurisdictions, most often Belize or Antigua).

³⁸See Crist, *supra* note 8, at 88 (noting that thousands of dollars in wagers may be placed each minute, yet bonds securing winnings usually do not exceed a few hundred thousand dollars).

³⁹For purposes of this article, alternatives to government regulation will not be a primary concern, though there is a movement among web page operators to self-regulate. See Jeri Clausing, *Online Gambling Industry Seeks Regulation to Save Itself*, N.Y. TIMES, Dec. 23, 1997 (describing Interactive Services Association's attempt to create “the equivalent of the Good Housekeeping seal of approval program for online gaming sites that voluntarily comply with its code of conduct” to both ensure that the industry remains free from government entanglement and earns respect as a trustworthy industry to customers).

⁴⁰See *supra* note 14 explaining the function of hyperlinks.

⁴¹See generally Dan L. Burk, *Jurisdiction in a World Without Borders*, 1 VA. J.L. & TECH. 3, ¶ 17 (1997) (last visited Mar. 21, 1998) <<http://www.student.virginia.edu/~vjolt/vol1/BURK.htm>> (explaining that a “user can effortlessly use the Internet utility . . . to access the Virginia account from his California account, and use the Virginia account exactly as if he were physically there”); see Coats and Rafter, *supra* note 17, at 99-100 (re-

Such a connection does not take the form of a traditional telephone communication. Instead, the link formed between the user and the web page may utilize various interconnected forms of electronic transfer perhaps consisting of telephone, cable, satellite, microwaves, cellular signals, and Integrated Services Digital Network ("ISDN")⁴² lines.⁴³ The particular pathways through which the data flows is beyond the control of either party.⁴⁴

The distinction may be demonstrated by the following example: a lawyer in New York places a telephone call to Cornell University School of Law seeking information. The lawyer would place the call in New York to a destination within that state, intending only to act within New York. On the other hand, if the lawyer chose to visit the law school's web page, the connection would likely involve routing the connection through numerous states or even countries following the path of least resistance.⁴⁵ Thus, an Internet user could potentially incur liability in any one of the jurisdictions the data traveled through if laws were designed to address such activity with sufficient particularity.⁴⁶

Alternatively, suppose the lawyer chose to run a keyword search for legal treatises on gambling, rather than connecting to a known cite and location in

marking that "users of the Internet are active receivers and transmitters" unlike other forms of consumers of radio and television).

⁴²See What is ISDN? (last visited Mar. 21, 1998) <<http://www.microsoft.com/windows/getisdn/whatis.htm>>. An "ISDN is a high-speed, fully digital telephone service [which] can dramatically speed up transfer of information over the Internet." *Id.*

⁴³See Goldstein, *supra* note 23, at 7-9 (depicting the nature of data transfer over the Internet).

⁴⁴See *ACLU v. Reno*, 929 F. Supp. 824, 831-32 (E.D. Pa. 1996), *aff'd*, 117 S. Ct. 2329 (1997).

⁴⁵See *id.* The path of least resistance, the particular collection of pathways the data follows pursuant to Net protocols, is not dependent upon geographic proximity. See *id.* at 831. Moreover, some estimates indicate that 50% of all links connect through California. See *id.*

⁴⁶If several state's gambling laws were construed to apply to wagering transactions which utilized computer networks with each state's respective jurisdiction, a party which was never physically present in any of those states could be found to have violated the law in all of those states. See *Quill Corp. v. North Dakota*, 504 U.S. 298, 306-08 (1992) (holding that an out of state mail order business had sufficient contacts with states, despite lack of physical presence, as a result of sales and catalog distribution). However, this approach would likely be rejected where data is merely in transit, because the connection is fortuitous at best and lacks any "purposeful" contact. See *id.*; see also *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 119 (1987) (indicating that a party who "fortuitously transports a defendant's product" would not provide sufficient contacts with the defendant).

New York.⁴⁷ Upon completion of the search, the search engine would display numerous results, each identified by domain name, title and possibly a brief summary of the contents of each enumerated web page.⁴⁸ Web site search results and web pages rarely provide a clue as to the geographic location of the host.⁴⁹ Thus, a party who has logged onto the Internet from his or her office or home may unwittingly be present in numerous geographic locations simultaneously.⁵⁰ Although most connections probably do not implicate local, criminal, or civil codes, in the case of Internet gambling, local regulations will undoubtedly be triggered.⁵¹ In light of the complex nature of Web connections, it is

⁴⁷See *supra* note 26 providing an explanation of the nature of a key word search.

⁴⁸See *id.*

⁴⁹See Burk, *supra* note 41, at ¶ 16.

⁵⁰See Leif Swedlow, *Three Paradigms of Presence: A Solution for Personal Jurisdiction on the Internet*, 22 OKLA. CITY U. L. REV. 337, 340; Sableman, *supra* note 17, at 142; H. Joseph Hameline and William Miles, *The Dormant Commerce Clause Meets the Internet*, 41 BOST. B.J. 8, 8 (1997); Sean Selin, *Governing Cyberspace: The Need for an International Solution*, 32 GONZ. L. REV. 365, 370 (1996-97).

⁵¹See *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d. 715, 721 (Minn. Ct. App. 1997) (describing the state's significant interest in protecting its citizens from unregulated gambling). Most connections are mere searches for information and thus do not implicate regulations. For example, jumping to <WWW.CNN.COM> to obtain the latest news updates does not implicate significant legal concerns for hosts or users; however all states have some form of gambling regulation, for example, New York's Bill of Rights states:

No lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, and except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, shall hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

NY CONST. Art. 1, § 9 ¶ 1 (McKinney's 1984). Paragraph 2 of the Article then carves out numerous exceptions to the rule which may be adopted at the discretion of local municipalities, with supervision by the state, for activities such as bingos, lottos, and games of chance provided they are operated by "bona fide religious, charitable or non-profit organizations of veterans, volunteer fireman and similar non-profit organizations" and do not provide any single prize valued over \$250 nor a combined value of prized over \$1000. Nevada has numerous statutes regulating gambling such as Nev. Rev. Stat. § 269.170 (1997) which grants

apparent that predictable and uniform application of the law will remain elusive. Historically, gambling has been regulated domestically on the federal or state level.⁵² However, Internet gambling is far less compatible with conventional legal methodology due to the lack of territorial containment and corresponding lack of effective enforcement powers of governments.⁵³

III. PERSONAL JURISDICTION ON THE INTERNET & REGULATING WITH TRANSJURISDICTIONAL EFFECTS

The use of the Internet for global communications has unquestionably increased the efficiency of commercial markets.⁵⁴ This result, however, has not occurred without significant judicial entanglement.⁵⁵ The impact of technology on the world can result in inconsistent approaches to unprecedented legal dilemmas and the continual need to adapt the law.⁵⁶ This has been rather evident in the birth of on-line gambling regulations.⁵⁷ Sovereign jurisdictions may be

the power to municipalities to license gambling houses and Nev. Rev. Stat. § 412.598 (1997) which permits the Nevada National Guard to prohibit all unlicensed gambling within one mile of the activities of the National Guard, but specifically exempts licensed establishments. Minnesota, on the other hand, prohibits all establishments selling alcoholic beverages from offering gambling except for those specifically authorized by the Indian Gaming Regulatory Act or by a compact with the State. See Minn. Stat. § 340A.410(5) (1996).

⁵²See Montpas, *supra* note 7, at 165-67 (discussing the history of gambling regulation within this country and state adoption of lotteries, riverboat gambling, and racing).

⁵³See *id.*

⁵⁴See *supra* note 17 and accompanying text for a description of the Internet's impact on commerce.

⁵⁵See *id.*

⁵⁶For example, in *World Wide Volkswagen Corp. v. Woodson*, the Court reiterated the fact that in modern commercial transactions, more than one state is usually implicated. See 444 U.S. 286, 293 (1980). In addition, the Court recognized that with this increase in transjurisdictional commercial endeavors also comes the transportation and communication facilities which make defending suits far less burdensome. See *id.* (citing *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-23 (1957)). In light of the preceding, the Court noted that "the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, to the flexible standard of *International Shoe Co. v. Washington*." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958)).

⁵⁷See *infra* notes 61-65 and accompanying text discussing various state's attempts at regulating the Internet.

come frustrated when their individualized legal systems, grounded in unique cultural mores and separated by geographic demarcation, are forced to address a traditionally local concern in the international arena.⁵⁸ Nowhere is the impact of jurisdictional dilemmas more evident than among the various sovereign states of this Union.⁵⁹

In the years since the inception of the Internet,⁶⁰ states have taken various steps to monitor and regulate conduct in Cyberspace.⁶¹ Although many states

⁵⁸See *Cybersell Inc., v. Cybersell Inc.*, 130 F.3d 414, 415-16 (9th Cir. 1997); (discussing the ramifications of advertising on the Internet and trademark infringement on the web); *Hearst Corp. v. Goldberger*, 1997 WL 97097, at *1 (S.D.N.Y. 1997) (finding that although a web site may be accessed within a jurisdiction, the absence of any contracts for purchase and sale would preclude jurisdiction); *ACLU v. Reno*, 929 F. Supp. 824, 830 (E.D.Pa. 1996) (finding that "the exponentially growing, worldwide medium that is the Internet, [] presents unique issues relating to the application of First Amendment jurisprudence and due process requirements to this new and evolving method of communication"); *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 718 (Minn. Ct. App. 1997) (noting that "the Internet is a communication medium that lacks historical parallel in the potential extent of its reach and that regulation across jurisdictions may implicate fundamental First Amendment concerns. It will undoubtedly take some time to determine the precise balance between the rights of those who use the Internet to disseminate information and the powers of jurisdictions in which receiving computers are located to regulate for the general welfare"); *Burk*, *supra* note 41, at ¶ 5 (proffering that traditional notions of legal jurisdictions have been eroded by appearance of the Internet); *Sableman*, *supra* note 17, at 137 (remarking that "unexpected legal and jurisdictional pitfalls" are likely to play havoc with entities seeking to do business in Cyberspace); *Selin*, *supra* note 50, at 371-73, 382 (raising jurisdictional concerns facing Internet users at an international level); *Swedlow*, *supra* note 50, at 337-38 (discussing the dilemmas that new technologies, specifically the Internet's impact on jurisdiction, have caused to current law); Howard G. Zaharoff and Thomas W. Evans, *Cyberspace and the Internet: Law's Newest Frontier*, 41 BOST. B.J. 14, 14 (1997) (explaining that "Cyberspace . . . poses many new issues, and puts a spin on many old issues, for business lawyers, litigators, and intellectual property specialists.").

⁵⁹See *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996) (reversing district court's denial of jurisdiction over a Texas Internet subscriber who had purposefully availed himself by entering business contacts over the Internet in Ohio, the forum state); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997) (upholding jurisdiction in Pennsylvania in a trademark infringement case over a California corporation for advertising and contracting through an Internet web page, explaining that "[d]ifferent results should not be reached simply because business is conducted over the Internet"); *Granite Gate Resorts, Inc.*, 568 N.W.2d at 716-17 (upholding personal jurisdiction in Minnesota over Nevada defendant who advertised via the web an imminent Internet gaming site on the Web).

⁶⁰See *supra* note 2.

⁶¹See *Burk*, *supra* note 41, at ¶ 3 (depicting a growing trend of the federal and state legislatures which have begun to pay attention to the need for "cyberlaw"); *Coats and Rafter*, *supra* note 17, at 104-05 (indicating that most states have either implemented or are

have relied upon existing rules and regulations to govern Internet transactions,⁶² others have been forced to reinterpret, amend or enact new legislation to accommodate the technical advancements which have stalled previous attempts at governing Internet activities.⁶³ The unavoidable reality of regulating

contemplating regulations governing Internet advertising); *see also* Philip T.K. Daniel, *The Electronic Media and Student Rights to the Information Highway*, 121 ED. LAW REP. 1 (1997) (commenting on the difficulty parents and schools have in controlling and monitoring what children have access to by virtue of the Internet). Commenting on the development of the Internet some authors argue that:

The rapid growth of the group known as "cyberspace" users will be accompanied by a growth of regulation. As long as cyberspace was a playground for a small fraction of highly educated people, paid for by large institutions, the myth of an unregulated, independent space could grow. Part of the happy mythology of the network holds that it is a self-regulating entity, controlled by no government—one of the few instances in history of successful anarchy. This was never completely true since most countries have long-standing laws that regulate speech and commerce, irrespective of the medium. . . . It should not have been surprising that with its expansion the Net became relevant to the "real" world. Legal reality intruded upon the world of Internet: Where terms like "rape in cyberspace," "cybertorts," "cybercrime," and "cyberterrorism" are created, the cry for regulation is not far away.

Stephan Wilske and Teresa Schiller, *International Jurisdiction in Cyberspace: Which States May Regulate the Internet?*, 50 FED. COMM. L.J. 117, 120-22 (1997) (citations omitted). It is appropriate to note that the reference to Cyberspace is not intended to imply a distinct "realm," rather the term is one of increasingly common parlance intended to describe activities transpiring on the Internet which have an unearthly appearance; perhaps due to the general lack of understanding of its tangible properties.

⁶²*See* Montpas, *supra* note 7, at 177-78. In Minnesota, for example, existing consumer fraud statutes were used to prosecute the advertisement of on-line gaming, however, no prosecutions for gambling have been forthcoming, despite the Minnesota Attorney General's warnings. *See id.* (citing *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715 (Minn. Ct. App. 1997)). Both Texas and Florida have pursued ethics violations against attorneys, both within and outside of their borders, for advertising on the Internet under traditional rules. *See* Burk, *supra* note 41 at ¶ 3 (citing Texas State Bar Advertising Committee, *Interpretive Comment on Attorney Internet Advertising*, Mar. 6, 1996; Florida Bar News, *Ethics Update*, Jan. 1, 1996); Hameline and Miles, *supra* note 50, at 8 (commenting upon the use of existing state laws to govern the Web, the authors explain that "unforeseen consequences" are often the result, not to mention the predictable impact, state regulation would have on interstate commerce).

⁶³*See* Goodman, *supra* note 16, at 476 (explaining that all states, with the exception of Vermont, have passed new laws attempting to regulate Internet crime); Hameline and Miles, *supra* note 50, at 21 (recognizing twelve states that passed laws to regulate content on the Net); *Wisconsin Proposes New Legislation to Curb Computer Crimes*, 1996-MAY

conduct on the World Wide Web is the very fact that its dimensions are global.⁶⁴ A state seeking to enforce regulations regarding, for example, con-

NAAGCPR 1, at 1-2 (depicting Wisconsin's attempts to update its laws to accommodate technology to prevent access to pornography, gambling, and fraud with fines up to \$10,000 as well as forfeiture of computer hardware and seeks the ability for courts to restrict offenders future computer access); see also John Gibeaut, *Questions of Authority*, 83 A.B.A. J. 42, 42 (1997) (indicating that "[c]ourts have only begun considering jurisdictional questions in Cyberspace in the past year or so . . . , courts that have faced it find it troubling, to say the least"); Burk, *supra* note 41, at ¶ 3 (explaining that Georgia and California have begun to implement new legislation aimed at fraud on the Web, but noting with approval that Florida's Attorney General "has opined that because of the novel nature of the Net, forays into on-line enforcement of current law would be premature" (citations omitted)). Professor Burk explains that, "[t]he wisdom of Florida's position becomes apparent when the nature of the Internet is carefully considered . . . [t]he Internet extends beyond the boundaries of any of the states, and the effects of state regulation will likewise spill over state borders." *Id.* at ¶ 5. He explains that regulations over the medium, which must be transjurisdictional, would naturally raise federalism and state sovereignty concerns. See *id.* Prof. Burk argues that "[t]he prospect of states applying haphazard and uncoordinated multi-jurisdictional regulation to the Internet's seamless electronic web raises profound questions regarding the continued growth and usefulness of this medium . . . [a]nd, given the international nature of the network, even centralized federal attempts at regulation raise grave questions regarding international sovereignty and jurisdiction." *Id.* In addition, commentators believe that recent decisions striking down state and federal legislation aimed at Internet regulation as violative of the commerce clause and First Amendment, respectively, may hinder future attempts at regulation. See Hameline and Miles, *supra* note 50, at 8 (citing *Reno v. ACLU*, 117 S. Ct. 2329 (1997); *American Library Ass'n. v. Pataki*, Civ. A. No. 97-0222 (LAP) (S.D.N.Y. June 20, 1997)).

⁶⁴See *supra* note 3 and accompanying text; Montpas, *supra* note 7, at 164, 173-74 (explaining that the Web has forced the need to create new state and federal legislation that can deal with the jurisdictional problems associated with Internet gambling, doubting that an effective solution can be reached due to a prevailing lack of understanding of Cyberspace on the part of those seeking to regulate it). The Internet has been designed so that user's have unimpeded access to web cites and many argue that preventing access once a site is placed on the Web is practically virtually impossible. See *id.* at 176. If true, regulators will face significant problems in enforcing gambling laws because the ability to punish gambling service providers, or gamblers for that matter, is dependent upon learning that the act has occurred. See *id.* The complex nature of the Internet and law enforcement's unfamiliarity with it do not lend credence to the ability for efficient discovery of wrong doing. See *id.* at 176.

Many theorists have attempted to explain how earlier forms of technology relating to communication such as radio and television were regulated practically from their inception while the Internet has yet to succumb to the burden of strict administrative oversight. See Coats and Rafter, *supra* note 17, at 98-100. Interestingly, as radio began to take a foothold, "one of the first radio stations in San Jose, California, inquired of the Department of Commerce, if it could advertise over the radio, the horrified response was that there was no law against advertising but it was unimaginable that anyone would do it." *Id.* at 98. However, the Federal Communications Commission was established to regulate the radio, and later

sumer protection and advertising,⁶⁵ would be severely limited if it were only to apply its law to persons domiciled or appearing within its territorial borders.⁶⁶ Contacts made on the Internet likely involve parties from divergent states or countries, thus most potential defendants would reside outside of a state seeking to enforce its regulations thereby raising the important concerns of extrater-

television, pursuant to the theory that broadcasters are common carriers who may be granted a license to use the airwaves as public property. *See id.* at 99. By contrast, it is contended that, “[r]egulation of the Internet will be difficult because of the unlimited broadcast points available.” *Id.* at 99-100. Coats and Rafter note that those who use radios and televisions are “passive receivers” of information, whereas Internet users are “active receivers and transmitters,” with a virtually unlimited number of sites to transmit to and from. *See id.* This divergence from previous mediums has caused enforcement problems which Coats and Rafter conclude is best monitored through self-regulation. *See id.*

Additionally, it is not beyond the realm of possibility that a network of millions of privately owned computers, which together form a complex resource known as the Internet, collectively unclaimed, could be declared the property of the public. *See, e.g.,* United States v. California, 381 U.S. 139 (1965) (discussing the Submerged Lands Act, 43 U.S.C.A. § 1301, *et seq.*, as it related to the international *Convention of the Territorial Sea and the Contiguous Zone* in granting title to States the land beneath navigable waterways); Missouri v. Holland, 252 U.S. 416, 434-35 (1920) (explaining the supremacy of the federal treaty power over individual state regulation in controlling migratory birds due to the transitory and fleeting presence of them and lack of physical possession); Selin, *supra* note 50, at 368-69 (noting that “the Internet is not a single entity, and no government, company or individual controls it”). The significant impediment to nationalization of the resource is its transcendence across national borders in an indivisible form, and any attempt to regulate on a national level proves either futile or threatens the national sovereignty of countries more tolerant of an unregulated Internet. *See* Burk, *supra* note 41, at ¶¶ 5-6; Montpas, *supra* note 7, at 182 (describing an incident in which CompuServe was forced to censor materials it placed on the Internet, intended for global consumption, to comply with German law alone effectively permitting a single nation to “censor[] the rest of the world—at least for two weeks”) (citing Karen Kaplan, *Government Censorship of the Internet Futile, Experts Say*, L.A. TIMES, Dec. 30 1995, at D1).

⁶⁵*See Ads on Internet, Use of Web Site to Develop Mailing List are ‘Minimum Contacts’*, 5 NO. 24 MEALEY’S LITIG. REP.: INTELL. PROP. 4, 4 (1997) (describing the Minnesota prosecution for Internet advertising on-line gambling in *Granite Gate Resorts*); Gibeaut, *supra* note 63, at 42 (noting that “[a]lthough most of the cases decided thus far involve trademark disputes,” cases have also dealt with jurisdiction, defamation, and consumer protection). These issues constitute a significant amount of the regulatable issues governing Cyberspace. *See id.*

⁶⁶*See infra* note 144 and accompanying text discussing the transjurisdictional impact of Internet regulations; *see also* Gorman and Loo, *supra* note 19, at 669 (remarking that “the existence of encryption technology, digital telephony, electronic money, tracing difficulties, personal jurisdiction, international comity and sovereignty may preclude the United States from enforcing its laws abroad”).

ritorial application of rules and the assertion of personal jurisdiction over a distant defendant.⁶⁷ Moreover, “[t]o impose traditional territorial concepts on the commercial uses of the Internet has dramatic implications, opening the Web up to inconsistent regulations throughout the fifty states, indeed throughout the globe.”⁶⁸

There are several procedural concepts to consider in the regulation of on-line gambling. Primarily, the application of regulations must be separated into both civil actions and criminal prosecutions.⁶⁹ In civil suits, courts must appropriately assert personal jurisdiction over absent defendants while ensuring that the appropriate jurisdiction’s regulations govern.⁷⁰ The later determination may be considered in terms of choice of law and the proscription of regula-

⁶⁷*Id.*

⁶⁸Gibeaut, *supra* note 63, at 43 (quoting *Digital Equip. Corp. v. AltaVista Tech., Inc.*, 960 F. Supp. 456 (D. Mass. 1997)).

⁶⁹*See Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 719 (Minn. Ct. App. 1997). Realizing that many states will be parties to civil actions relating to consumer protection actions which may appear to be quasi-prosecutorial. *See id.*

⁷⁰*See Hameline and Miles, supra* note 50, at 8 (indicating that “the Internet is the first medium that defies our traditional methods of marking boundaries. When traveling on the Internet, we receive little or no warning as to when we have left our state or indeed our nation; it is an international communications medium with no recognizable borders.”); Swedlow, *supra* note 50, at 340 (arguing that “[o]ne court may see Internet activity as the extension of the defendant’s personality into the forum state, while another court may see the plaintiff as electronically traveling to other jurisdictions”).

Choice of law issues are raised within the gamut of either the Fourteenth Amendment or the Full Faith and Credit Clause of the United States Constitution. *See Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 (1981). In *Allstate*, Justice Brennan wrote:

In deciding constitutional choice-of-law questions . . . this Court has traditionally examined the contacts of the State, whose law was applied, with the parties and with the occurrence or transaction giving rise to the litigation In order to ensure that the choice of law is neither arbitrary nor fundamentally unfair, . . . the Court has invalidated the choice of law of a state which has no significant contact or significant aggregation of contacts, creating state interests, with the parties and the occurrence or transaction.

Id.; *see also Coats and Rafter, supra* note 17, at 109-10 (explaining that courts have yet to resolve the choice of laws debate regarding conduct on the Internet) (citing *Creative Tech., Ltd. v. Aztech Sys. Ltd.*, 61 F.3d 696 (9th Cir. 1995)).

tions.⁷¹ On the other hand, the ability for a state to prosecute a criminal suspect is dependent upon the power of the state to regulate the conduct in question and upon the physical presence of the defendant within the prosecuting state.⁷² Thus there must be some guarantee that a criminal defendant will be apprehended.⁷³ Although domestically our federal system assists in the resolution of these factors, these concerns are far more complicated where the potential defendant resides beyond the national boundaries of a country.⁷⁴

A. THE TRADITIONAL REACH OF THE FIFTY STATES—DOES THE APPROACH OF *WORLD-WIDE VOLKSWAGEN* SUFFICE?

The Due Process Clause⁷⁵ protects a defendant from litigating in a distant forum and ensures that state sovereignty is respected in the federal system.⁷⁶ Yet, states maintain the ability, as sovereign entities, to reach beyond their territories to assert jurisdiction over defendants.⁷⁷ This power is known as long-

⁷¹*See id.*

⁷²*See Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 796 (1993) (in upholding the application of the Sherman Act to conduct occurring beyond the borders of the United States, the court explained “it is well established by now that the Sherman Act applies to foreign conduct that was meant to and did in fact produce some substantial effect in the United States”); *United States v. Aluminum Co. of Am.*, 148 F.2d 416 (2d Cir. 1945).

⁷³*See id.*

⁷⁴*See id.*

⁷⁵The Fourteenth Amendment of the United States Constitution states that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

⁷⁶*See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (citing *Kulko v. Superior Court*, 436 U.S. 84, 91 (1978) (explaining the requirement that a distant defendant be provided with notice of a suit and have sufficient contacts with that state to justify the burden of litigating in the forum).

⁷⁷*See Milliken v. Meyer*, 311 U.S. 457, 459-63 (1940); K. Beyler, *The Illinois Long-*

arm jurisdiction and although its reach varies from state to state, it can never extend beyond the limits of the Due Process Clause.⁷⁸

Despite the more than one hundred years since *Pennoyer v. Neff*,⁷⁹ personal jurisdiction has remained one of the most elusive concepts of modern legal theory.⁸⁰ Generally, courts have remained consistent in their application of due process such that a defendant is only subject to personal jurisdiction where the court finds “certain minimum contacts with [the state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”⁸¹ However, the judiciary is mindful of the fact that our world has continued to develop beyond what the framers of our constitution had antici-

Arm Statute: Background, Meaning, and Needed Repairs, 12 S. ILL. L.J. 293, 412-14 (1988).

⁷⁸See, e.g., Uniform Interstate and International Proc. Act § 1.03 (1996); *Georgia's Not-So-Long Arm Statute: Exposing the Myth*, 6 GA. ST. L. REV. 487 (1990). In New Jersey, this power extends to the limits of the Due Process Clause of the United States Constitution. See N.J. CT. R. 4:4-4; *Charles Gender & Co., Inc. v. Telecom Equip. Corp.*, 102 N.J. 460, 469, 508 A.2d 1127, 1131 (1986) (citing *Avdel Corp. v. Mecure*, 58 N.J. 264, 268, 277 A.2d 207, 209 (1971)). New York, on the other hand, has adopted a more intolerant approach to jurisdiction finding limits greater than those extrapolated from the Due Process Clause. See N.Y. C.P.L.R. § 302 (McKinney 1990). Commentators on long-arm statutes explain that:

The basic outline for most opinions on personal jurisdiction looks first to the long-arm statute of the state in which the court sits, then to the due process analysis of minimum contacts and the fairness factors. Most states long-arm statutes have either been phrased or construed to allow jurisdiction as far as the Constitution will allow. This default provision often simplifies the analytic task of the court by letting the federal constitution be the final arbiter of the issue.

Swedlow, *supra* note 50, at 344 (citations omitted).

⁷⁹95 U.S. 714 (1877).

⁸⁰See *World-Wide Volkswagen*, 444 U.S. at 293 (discussing the intent of the framers with respect to the due process clause and sovereignty); Kevin M. Fitzmaurice and Renu N. Mody, *International Shoe Meets the World Wide Web: Whither Personal Jurisdiction in Florida in the Age of the Internet?*, 71 DEC. FLA. B.J. 22, 22 (1997) (depicting the Supreme Court's view of personal jurisdiction analysis as an “imprecise inquiry,” citing *Calder v. Jones*, 465 U.S. 783, 790 (1984), and adding that when the analyses is applied to the Internet, it is a “wild card”). In *Pennoyer*, the Court proffered the concept of presence for purposes of personal jurisdiction. See *Pennoyer*, 95 U.S. at 724-26.

⁸¹*International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

pated.⁸²

Justice White elucidated, in *World-Wide Volkswagen Corp. v. Woodson*,⁸³ that the reasonable maintenance of a suit in a particular forum must be the result of some form of "purposeful availment" of the privileges and benefits of the law of the forum state.⁸⁴ Moreover, the defendant must, at a minimum, be on notice that it has subjected itself to jurisdiction within that forum and has an opportunity to "alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or . . . severing its connection with the State."⁸⁵ Plaintiffs, having chosen their forum, bear the burden of proving that an absent defendant has sufficient contacts with the forum state to establish personal jurisdiction.⁸⁶

⁸²See *World Wide Volkswagen*, 444 U.S. at 293.

⁸³*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

⁸⁴See *id.* at 297 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

⁸⁵*Id.* at 297. The Court explained that "[t]he Due Process Clause, by ensuring the 'orderly administration of the laws,' gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.* at 297 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). Additionally, the Court explained that unilateral activity of the plaintiff alone will not afford the forum state with an appropriate basis for jurisdiction. See *id.* at 297-98. Generally, in evaluating the exercise of a state court's jurisdiction, a court must consider the burden of litigating in a foreign forum imposed on the defendant, the interests of the parties in obtaining effective and convenient relief, the interests of the interstate judicial system in efficiently resolving controversies, and the several states' interest in furthering substantive social policies. See *id.* at 292. Furthermore, in *Asahi Metal Indus. Co. v. Superior Court*, the Supreme Court intimated that "fair play and substantial justice" may forbid the assertion of personal jurisdiction over a defendant despite the appearance of minimal contacts with a forum where those contacts are merely the result of the stream of commerce. See 480 U.S. 102, 112-16 (1987) (plurality).

⁸⁶See *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 379 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991); *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 63 (3d Cir. 1984). To carry its burden, a plaintiff must demonstrate with reasonable particularity that the court has either specific jurisdiction or general jurisdiction through a showing of "certain minimum contacts" with the forum as discussed below. See *International Shoe Co.*, 326 U.S. at 316; see also *Pfundstein v. Omnicom Group Inc.*, 285 N.J. Super. 245, 250, 666 A.2d 1013, 1015 (N.J. Super. Ct. App. Div. 1995).

These "minimum contacts" are measured differently depending on whether the case "arises out of or relates to" them. If a suit "arises out of or relates to" the contacts, the state acquires personal jurisdiction if the nonresident "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." This is called "specific

In *Asahi Metal Industries Co., Ltd. v. Superior Court of California*,⁸⁷ the Supreme Court reiterated the factors courts should use to assess the reasonableness of exercising jurisdiction once minimum contacts have been established.⁸⁸ The Court explained that “[a] court must consider the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief [and] ‘the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.’”⁸⁹ In *Asahi*, the Court compared the burden of the Japanese manufacturer in defending a suit arising out of a product it sold in Japan to the interests of California in fostering an abstract consumer protection concern.⁹⁰ The Court reversed the Supreme Court of California’s assertion of jurisdiction finding that California’s “interest in ‘protecting its consumers by ensuring that foreign manufacturers comply with the state’s safety standards’ have considerably diminished [] because the plaintiff is not a California resident.”⁹¹ Justice O’Connor quoted *United States v. First National City Bank*, stating that “[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.”⁹² The concept of jurisdiction is designed to maintain basic notions of federalism by ensuring that “States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sover-

jurisdiction.” If the suit does not “arise[] out of or relate[] to” the contacts, the state acquires personal jurisdiction if the contacts were “continuous and systematic.” This is called “general jurisdiction.”

Id. at 250-51 (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8, 415 n.9 (1984); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1951)).

⁸⁷480 U.S. 102 (1987) (plurality opinion).

⁸⁸*See id.* at 113.

⁸⁹*Id.* at 113 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

⁹⁰*See id.* at 114-16.

⁹¹*See id.* (quoting *Asahi Metal Indus. Co. v. Superior Court*, 702 P.2d 989, 550 (Cal. 1985)).

⁹²*Id.* at 115 (quoting *United States v. First Nat’l. City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting)).

eigns in a federal system.”⁹³

In *Calder v. Jones*,⁹⁴ the Supreme Court enunciated the principle of jurisdiction for measuring minimum contacts known as the “effects test.”⁹⁵ Under this test, a defendant may be subject to personal jurisdiction where they have knowingly caused a harmful effect even though they never acted within the forum.⁹⁶ In *Calder*, entertainer Shirley Jones brought a defamation action in California against the Florida editors of the *National Inquirer*, a Florida corporation.⁹⁷ In upholding jurisdiction over the editors of the nationally-circulated periodical, the Court remarked that the appropriate forum is “the focal point both of the story and of the harm suffered.”⁹⁸

The effects test may be applied to Internet gambling where economic incentives drive a sports gambling web site or casino home page to reap the benefits of a foreign jurisdiction's citizenry, thus exposing them to severe economic and emotional harm, as well as the blatant enticement of criminal activity.⁹⁹ A court would likely find that fraud or other cognizable injury, arising out of a gambling transaction, committed against a citizen of a state would give rise to personal jurisdiction under the effects test.¹⁰⁰ For example, if a Nevada web site accepted wagers and failed to pay out any winnings, that web-page would be amenable to suit for fraud in any state from which it accepted wagers because it purposefully defrauded and injured those citizens.¹⁰¹ Thus web site operators need to be conscious of whom they seek wagers from because they

⁹³*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

⁹⁴465 U.S. 783 (1984).

⁹⁵*See id.* at 788-90.

⁹⁶*See id.* *But see* *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987) (indicating the need for a “substantial connection” with the forum, not merely the placement of a product in the “stream of commerce”).

⁹⁷*See Calder*, 465 U.S. at 784-85.

⁹⁸*Id.* at 789. Although the plurality of *Asahi* tended toward an implicit departure from the *Calder* effects test, the *Calder* test remains a viable standard for jurisdictional principles. *See Asahi Metal Indus. Co.*, 480 U.S. at 102.

⁹⁹*See Calder*, 465 U.S. at 788-90.

¹⁰⁰*See id.*

¹⁰¹*See id.*

may be amenable to suit in any jurisdiction which they accept wagers from.¹⁰²

B. PERSONAL JURISDICTION VIA THE WEB: A NEW BEGINNING?

Courts have recently begun to address issues of procedure as they relate to conduct on the Internet.¹⁰³ In *United States v. Thomas*,¹⁰⁴ the court found venue proper for California defendants in the Western District of Tennessee.¹⁰⁵ The defendants had been accused of peddling pornography over the Web, thus dispersing illicit material in Tennessee.¹⁰⁶ Addressing the issue of venue, the court relied upon the fact that the defendants had been made aware that they were making materials available in the forum state.¹⁰⁷ The court reasoned that because the defendants had acquired customers' addresses through the requisite subscription process, the defendants obtained knowledge of jurisdictional contacts as well.¹⁰⁸ Other influential cases, including *CompuServe, Inc. v. Patter-son*,¹⁰⁹ *McDonough v. Fallon McElligott, Inc.*,¹¹⁰ and *Bensusan Restaurant Corp. v. King*,¹¹¹ raised the related concern of obtaining minimum contacts

¹⁰²*See id.*

¹⁰³*See Burk, supra* note 41, at ¶ 6; Gibeaut, *supra* note 63, at 42.

¹⁰⁴74 F.3d 701 (6th Cir. 1996).

¹⁰⁵*See id.* at 705.

¹⁰⁶*See id.* at 705-06.

¹⁰⁷*See id.* at 709-10.

¹⁰⁸*See id.*

¹⁰⁹89 F.3d 1257, 1259-60 (6th Cir. 1996) (holding that district court erred in refusing to extend jurisdiction over a Texan who had entered into software agreements over the Internet with petitioner in Ohio).

¹¹⁰1996 WL 753991 at *1-3 (S.D. Cal. Aug. 5, 1996) (granting motion to dismiss for lack of personal jurisdiction; refusing to assert jurisdiction solely on the basis of the existence of defendant's web site which is accessible within the forum; asserting that such a step "would eviscerate the personal jurisdiction requirement as it currently exists").

¹¹¹937 F. Supp. 295, 300-01 (S.D.N.Y. 1996) (implicitly rejecting the form of jurisdiction espoused in *Maritz, Inc. v. Cybergold, Inc.* under both the New York long-arm statute and the Due Process Clause), *aff'd on other grounds*, 126 F.3d 25, 28-29 (2d Cir. 1997) (leaving undisturbed the assertion of jurisdiction of the district court).

through the Internet for the assertion of personal jurisdiction.¹¹² Specifically, these cases held that, in addition to placing a web site on the Internet, a defendant must also have contacts with the forum which manifest an intent to seek the privileges and benefits of the forum's laws.¹¹³ By contrast, the holdings in *Maritz, Inc. v. Cybergold, Inc.*¹¹⁴ and *Inset Systems, Inc. v. Instruction Set, Inc.*,¹¹⁵ expressed a far more relaxed interpretation of purposeful availment.¹¹⁶

These cases have espoused the proposition that merely creating a web site for the purpose of advertising or enhancing communication, a defendant has purposely availed itself in all forums which have the capability of accessing that web page. Thus, a defendant would have subjected itself to personal juris-

¹¹²See *United States v. Thomas*, 74 F.3d 701, 709-10 (6th Cir. 1996).

¹¹³See *supra* notes 55-62, 112-15; *cf.* *Wines v. Lake Havasu Boat Mfg. Inc.*, 846 F.2d 40, 41 (8th Cir. 1988) (holding that a defendant who places an advertisement in a nationally circulated periodical does not establish grounds for personal jurisdiction in a particular forum); *Sears Roebuck & Co. v. Sears*, 744 F. Supp. 1289, 1297 (D. Del. 1990) (explaining that defendants who advertise in periodicals which circulate internationally do not subject themselves to personal jurisdiction in every forum the periodical appears).

¹¹⁴947 F. Supp. 1328, 1334 (E.D. Mo.), *reh'g denied*, 947 F. Supp. 1338 (E.D. Mo. 1996) (holding that jurisdiction was proper over a California defendant who had tortiously interfered with the economic interests of a Missouri resident in violation of the Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A § 1125(a), despite the fact that defendant had no contact with Missouri other than through the posting of its web page).

¹¹⁵937 F. Supp. 161 (D. Conn. 1996) (exercising jurisdiction over a Massachusetts defendant merely for advertising on a web page and providing a phone number that interested persons may call). Judge Covello wrote that:

In the present case, Instruction has directed its advertising activities via the Internet and its toll-free number toward not only the state of Connecticut, but to all states. The Internet as well as toll-free numbers are designed to communicate with people and their businesses in every state. Advertisement on the Internet can reach as many as 10,000 Internet users within Connecticut alone. Further, once posted on the Internet, unlike television and radio advertising, the advertisement is available continuously to any Internet user. ISI has therefore, purposefully availed itself of the privilege of doing business within Connecticut.

Id. at 165.

¹¹⁶The holding in *Maritz, Inc. v. Cybergold, Inc.* cited to *Inset Sys., Inc.* for support that the Internet has justified a more liberal interpretation of purposeful availment because its communications are designed to reach every state. See *Maritz, Inc.*, 947 F. Supp. at 1334 (citing *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 165 (D. Conn. 1996)).

diction in those forums for claims arising out of the web page's availability.¹¹⁷ *Maritz, Inc.* involved an intentional tort against the plaintiff and would properly comport with the assertion of jurisdiction under the framework of the effects test.¹¹⁸ The court in *Inset Systems, Inc.* by contrast relied in part on the fact that defendants advertised with a toll-free number.¹¹⁹

In *Heroes, Inc. v. Heroes Foundation*,¹²⁰ the United States District Court for the District of Columbia compared the holding in *Bensusan Restaurant Corp.*¹²¹ to that of *Inset Systems, Inc.* The court concluded that the more liberal position of *Inset Systems, Inc.*¹²² appropriately recognized that the tortious conduct directed at the forum state gave rise to an appropriate basis for jurisdiction.¹²³ Despite these early attempts at devising an analytical framework for asserting personal jurisdiction over the Internet, no clear standard has been es-

¹¹⁷*See id.*

¹¹⁸*See Calder v. Jones*, 465 U.S. 783, 788-90 (1984); *supra* notes 94-98 for a discussion of the development of the effects test.

¹¹⁹*See Inset Sys., Inc.*, 937 F. Supp. at 165; *see also Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 717 (Minn. Ct. App. 1997).

¹²⁰958 F. Supp. 1 (D.D.C. 1996).

¹²¹937 F. Supp. at 301. *Bensusan Restaurant Corp.* was on appeal to the United States Court of Appeals for the Second Circuit and was affirmed on September 10, 1997. *See Bensusan Restaurant Corp. v. King*, 126 F.3d 25 (2d Cir. 1997).

¹²²937 F. Supp. at 165.

¹²³*See Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1, 4-5 (D.D.C. 1996). The court derived a basis for jurisdiction from an advertisement in the Washington Post and alluded to the possibility that the defendant's web page may be a sufficient basis for jurisdiction. *See id.* The court explained:

Because the defendant's home page is not the only contact . . . the Court need not decide whether the defendant's home page by itself subjects the defendant to personal jurisdiction in the District. In weighing the importance of this particular contact, however, the Court notes that the defendant's home page explicitly solicits contributions, and provides a toll-free telephone number for that purpose. The home page also contains the defendant's allegedly infringing trademark and logo, the subject of the plaintiffs underlying claims. And the home page is certainly a sustained contact with the District; it has been possible for a District resident to gain access to it at any time since it was first posted.

Id. at 5.

established and many courts continue to assert jurisdiction in unfair and burdensome circumstances.¹²⁴

In *Minnesota v. Granite Gate Resorts, Inc.*,¹²⁵ the first published opinion

¹²⁴Courts again adjudicated the issue in cases such as *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). There the court attempted to harmonize the approaches to jurisdiction exemplified in *CompuServe, Inc. v. Bensusan Restaurant Corp.*, and *Maritz, Inc.*, while remarking that *Inset Systems, Inc.* “represents the outer limits” of personal jurisdiction analysis. *See id.* In *Zippo Mfg. Co.*, the court articulated a “sliding scale” approach to the assertion of jurisdiction wherein “the nature and quality of commercial activity that an entity conducts over the Internet” is analogous to the potential for constitutional personal jurisdiction in a given forum). *Id.* at 1124. At the lowest end of the scale’s range lies the passive web page, such as that found in *Bensusan Restaurant Corp.*, where the assertion of jurisdiction would be inappropriate. *See id.* As the level of activity rises, the scale reveals an intermediate web site which provides for the exchange of information between the user and host. *See id.* At this stage, the assertion of personal jurisdiction is possible, but the standard for its exercise is less clear and often depends on the nature and quantity of the exchanges. *See id.* (citing *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996)). Finally, when a host begins to enter contracts or commercial relationships via the Internet, the scale has reached the high end, where jurisdiction is justified under the more traditional concepts. *See id.* (citing *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996)); *see also* *Cybersell Inc. v. Cybersell Inc.*, 44 U.S.P.Q.2d 1928, 1928-29 (9th Cir. 1997) (stating that “it would not comport with ‘traditional notions of fair play and substantial justice,’ . . . for Arizona to exercise personal jurisdiction over an allegedly infringing Florida web site advertiser who has no contacts with Arizona other than maintaining a home page that is accessible to Arizonans”) (citations omitted); *Hearst Corp. v. Goldberger*, 1997 WL 97097 (S.D.N.Y. Feb. 26, 1997) (Peck, Magistrate J.) (recommending that the district court lacks jurisdiction over a trademark infringement action defendant who merely operates a web site which is accessible to New Yorkers, where no agreements, contracts or any other business was conducted); *Digital Equip. Corp. v. Altavista Tech., Inc.*, 960 F. Supp. 456, 468-72 (D. Mass. 1997) (determining that a web page advertisement provided minimum contacts where there also been a trademark licensing agreement in the forum).

¹²⁵568 N.W.2d 715, 718-21 (Minn. Ct. App. 1997). Relying on *Maritz, Inc.*, *Zippo Manufacturing Co.*, and *Inset Systems, Inc.*, the court upheld jurisdiction over a Nevada defendant who maintained a passive web page which advertised on-line gambling service in violation of the Minnesota consumer fraud statute, opining that the intent of the defendant was to attempt to advertise globally. In an interesting argument, the court proffered that:

Internet advertisements are similar to broadcast and direct mail solicitation in that advertisers distribute messages to Internet users, and users must take affirmative action to receive the advertised product. Here, the WagerNet site itself stated that it was “open to International markets,” indicating an intent to seek customers from a very broad geographic area. The fact that WagerNet had apparently paid for advertising in English on an American commercial site indicates an intent to reach the American market, and by advertising their services with a toll-free number, appellants indicated their intent to solicit responses from all jurisdictions within that market, including Minnesota. A defendant cannot “hide behind the

relating to Internet gambling, was handed down by the Court of Appeals of Minnesota.¹²⁶ The court found personal jurisdiction over the Nevada defendant for advertising its gambling service on a Nevada web page.¹²⁷ In so holding, the court reasoned that a Nevada corporation, which had placed an advertisement on the Nevada tourist information web page,¹²⁸ amounted to sufficient contacts due to a “clear effort to reach and seek potential profit from Minnesota consumers.”¹²⁹ The Minnesota civil suit had charged the defendants with engaging in fraud, misrepresentation, and deceptive trade practices as a result of defendants advertising gambling services to Minnesota residents.¹³⁰ While the court acknowledged the existence of a disclaimer on the web page that “advised users to consult with local authorities regarding restrictions on offshore sports betting by telephone before registering with WagerNet,”¹³¹ the court asserted that the defendants knowingly advertised to all users when they utilized the Internet because they were aware that the information was transmitted

structuring of its distribution system when [the defendant’s] intent was to enter the market [in the forum state] and profit thereby.” (citation omitted) The presence of the disclaimer on the site may be relevant to the merits of the consumer fraud action, but appellants’ clear effort to reach and seek potential profit from Minnesota consumers provides minimum contacts of a nature and quality sufficient to support a threshold finding of personal jurisdiction.

Id. at 720. The court also noted that this analysis may be different in a non-commercial setting. *See id.* at 720 n.1.

¹²⁶Note that this Minnesota civil action is concerned with the act of advertising and consumer fraud, thus is not entirely important to Internet gambling as it relates to the act of wagering on-line. *See id.*

¹²⁷*See id.* at 721. However, the judgment upholding jurisdiction in that case is of questionable merit, despite the assertion that the “quantity of contacts here exceeds that in *Maritz*.” *Id.* at 719 (citing *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328 (E.D. Mo. 1996)). In *Granite Gate Resorts, Inc.*, the court measured the quantity of contacts by the number of times persons located in the forum visited the defendant’s web page. *See id.*

¹²⁸The web page promoted an on-line gambling service offered by WagerNet, which was to be opened in the latter half of 1995 in the country of Belize. *See id.* at 717. The domain name for the Nevada tourist information web page is <<http://www.vegas.com>>. *See id.*

¹²⁹*Id.* at 720.

¹³⁰*See id.* at 717.

¹³¹*Id.* The court indicated that the warning also contained a forum selection clause naming Belize as the forum of choice. *See id.*

globally.¹³² The court, however, did not attempt to address the issue of whether the defendants had the opportunity to prevent exposure to the laws of Minnesota.¹³³ After all, the Internet has enabled many previously isolated regions of the globe the opportunity to thrive commercially by removing historical trade barriers.¹³⁴ To subject all such fledgling operations to jurisdiction globally could defeat many virtues of the Internet.¹³⁵ Of course, the Internet should not serve to shield a party from suit where the impact on the forum state rises to the level of purposeful availment.¹³⁶

The approach of courts which would uphold jurisdiction over a defendant who merely maintained a passive web page, is constitutionally infirm because it lacks the due process considerations requisite in assertions of jurisdiction.¹³⁷ Such an approach would cause great dismay to host corporations.¹³⁸ If a host lacks the ability to tailor its web site to comport with the nuances of the laws of

¹³²See *id.* at 719 (citing *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 165 (D. Conn. 1996)).

¹³³See *supra* note 85 and accompanying text indicating that due process requires an opportunity to reduce the risks of litigation.

¹³⁴See generally *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1123 (W.D. Pa. 1997) (indicating that the "Internet makes it possible to conduct business throughout the world entirely from a desktop"); Coats and Rafter, *supra* note 17, at 102-03 (indicating the success many small businesses have achieved through the Internet). The Internet has significantly reduced the costs of business relating to the advertisement of products and services, improved customer/client communications, economized information exchange and enhanced overall productivity of many businesses. See, e.g., Sean M. Flower, *When Does Internet Activity Establish Minimum Contact Necessary to Confer Personal Jurisdiction?*, 62 MO. L. REV. 845, 845 (1997).

¹³⁵The cost of defending law suits globally would greatly outweigh the inexpensive benefits of maintaining a web page if investors believed that the business would commonly be defending civil actions. See *supra* note 134.

¹³⁶See *Bensusan Restaurant Corp. v. King*, 126 F.3d 25, 28-29 (2d Cir. 1997); *Compu-Serve, Inc. v. Patterson*, 89 F.3d 1257, 1263 (6th Cir. 1996); *United States v. Thomas*, 74 F.3d 701, 705 (6th Cir. 1996); *McDonough v. Fallon McElligott, Inc.*, 1996 WL 753991, at *1-3 (S.D. Cal. Aug. 5, 1996). But see *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328, 1334 (E.D. Mo. 1996); *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 164-65 (D. Conn. 1996).

¹³⁷See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 294 (1980).

¹³⁸See *Playboy Enters., Inc. v. Chuckleberry Publ'g, Inc.*, 939 F. Supp. 1032, 1044 (S.D.N.Y. 1996) (granting contempt order for violating injunction against distributing magazine in United States through posting on an Internet web page in Italy).

each state, as well as with the more divergent laws of the international community, it has two options. The host or service could (1) shut down and recognize that the legal consequences are cost prohibitive to the venture, or (2) make every effort to abide by all known regulations, praying that millions of potentially applicable global regulations do not pose a threat to the enterprise.¹³⁹ It would seem that the prudent operator would be forced to sign-off. Thus, despite the effectiveness of the Internet in facilitating communication, untamed assertions of jurisdiction may bring about its ruin.¹⁴⁰

The chilling effect which assertions of jurisdiction based on passive web site operation pose are unacceptable impediments to legitimate utilization of the World Wide Web.¹⁴¹ Moreover, the courts which deem passive web site activity as purposeful availment fail to understand the nature and limitations of the Internet.¹⁴² Furthermore, the technology required for the operator of a web page to "alleviate the risk of burdensome litigation . . . [by] severing its con-

¹³⁹See Weber, *supra* note 36, at B5, discussing the difficulty the Coeur d'Alenes tribe has faced in opening its on-line gambling site. Weber's article quotes Howard Goldfrach, vice-president of the managing company, stating, "[y]ou wouldn't believe how many sets of laws we conform to." *Id.* The Coeur d'Alenes tribe expressed its concerns that Native American tribes might be precluded from continuing in the Cyberspace gaming market, "while sites based overseas flourish." *Id.* (articulating the tribe's desperate need to enter the market). *Cf.* Montpas, *supra* note 7, at 182 (explaining the impact that one nation's law and the threat of prosecution can have on the Internet as a whole—one nation censors all).

¹⁴⁰See *supra* notes 14-16 and accompanying text discussing the web development and capability.

¹⁴¹See *supra* notes 75-77. In his article, Sean M. Flower explains that:

In order to achieve predictability, one of the most important and fundamental legal issues that must be resolved is personal jurisdiction. Without predictable and fair doctrines of personal jurisdiction, merchants will not know where they will be held liable, and consequently which substantive laws and rules they must obey. Therefore, it is essential that courts establish a predictable and fair system of Internet-based personal jurisdiction.

Flower, *supra* note 134, 845-46.

¹⁴²See *Cybersell Inc. v. Cybersell Inc.*, 44 U.S.P.Q.2d 1928, 1931-33 (9th Cir. 1997) (proffering that no cases have ever held that mere passive web site operation can constitute purposeful availment); *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 301 (S.D.N.Y. 1996) (holding that "[c]reating a site, like placing a product into the stream of commerce, may be felt nationwide or even worldwide-but, without more, it is not an act purposefully directed toward the forum state").

nection with a state"¹⁴³ simply does not exist. Accordingly, "traditional notions of fair play and substantial justice"¹⁴⁴ should not justify the assertion of personal jurisdiction in such cases.¹⁴⁵

In light of the preceding case law and the general principles of due process set forth above, the Supreme Court should follow the logic of the Courts of Appeals for the Second and Ninth Circuits.¹⁴⁶ Mere advertisement on a passive web site should not provide a sufficient basis for jurisdiction.¹⁴⁷ Under the Second and Ninth Circuits' reasoning, an interactive web page which either promotes or provides a gambling service should be amenable to suit where the host knew or should have known the domicile of the user.¹⁴⁸ Moreover, the heavily regulated nature of the gambling industry should place an operator on notice that the service may be illegal in many jurisdictions, thereby providing sufficient incentive to discover the location of users it is in contact with.¹⁴⁹

¹⁴³World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

¹⁴⁴International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer 311 U.S. 457, 463 (1940)).

¹⁴⁵Cf. Sableman, *supra* note 17, at 142 (indicating that although advertising alone should not subject a defendant to jurisdiction, several cases imply that it is plausible).

¹⁴⁶See *Bensusan Restaurant Corp. v. King*, 126 F.3d 25 (2d Cir. 1997); *Cybersell Inc. v. Cybersell Inc.*, 44 U.S.P.Q.2d 1928 (9th Cir. 1997).

¹⁴⁷See *McDonough v. Fallon McElligot, Inc.*, 1996 WL 753991 at *1-3 (S.D. Cal. Aug. 5, 1996). In refusing to exercise jurisdiction, the court explained that:

In his opposition papers, Plaintiff has alleged that Fallon maintains a . . . web [] site. Because the Web enables easy world-wide access, allowing computer interaction via the web to supply sufficient contacts to establish jurisdiction would eviscerate the personal jurisdiction requirement as it currently exists; the Court is not willing to take this step. Thus, the fact that Fallon has a web site used by Californians cannot establish jurisdiction by itself.

Id. at *3.

¹⁴⁸See *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

¹⁴⁹See *supra* note 51. Given that gambling cannot occur unless the server enters into a contract with the user and receives payment, the discovery of the domicile of the user should be apparent. See *supra* notes 25-34 and accompanying text in Part II describing the nature of wagering on the Internet. Moreover, Federal law prohibits persons engaged in the business of wagering or betting from utilizing wire communication facilities to transmit bets across state lines. See 18 U.S.C. § 1084 (West 1998) (the Federal Interstate Wire Act); see

Therefore, an on-line gambling corporation which operates from within the United States should be amenable to jurisdiction for civil suits only where the service has taken wagers or has attempted to take wagers from users.

C. PROSECUTION: PRESCRIPTION AND ENFORCEMENT OF CRIMINAL LAWS

Although *Granite Gate Resorts* provides some guidance for discussion of Internet gambling with regard to civil procedure, there has yet to be any published opinions pertaining to the prosecution of Internet gambling. However, numerous state attorneys general have threatened or brought actions seeking to prosecute individuals and corporations operating sites in violation of state gaming regulations.¹⁵⁰ Generally, states are more concerned with prosecuting

also Gorman and Loo, *supra* note 19, at 670-74. Furthermore, sports betting is illegal in all but two states, excepting horse and dog racing. See Brett Pulley, *On Antigua, It's Sun, Sand and 1-800 Betting*, NY TIMES, Jan. 31, 1998 (reporting that all states but Nevada and Oregon prohibit sports betting); Brooks, *supra* note 6, at 26N (indicating that virtually all states ban sports gambling). Most states have some form of lottery, but all are heavily regulated. See Adams, *supra* note 23, at 1031-37 (discussing the federal and state positions on lotteries). Casino style gambling is legal in only a few states, on various Native American lands, and on some waterways. See Keith David Bilezerian, *Ante Up or Fold: States Attempt to Play Their Hand While Indian Casinos Cash In*, 29 NEW ENG. L. REV. 463, 464-65 (1995); Stephanie A. Levin, *Betting on the Land: Indian Gambling and Sovereignty*, 8 STAN. L. & POL'Y REV. 125, 125-26 (1997) (articulating the historic struggle over the independence of tribal lands); Daniel T. Murphy and Jack M. Epps, *Riverboat Gaming Development in Missouri*, 53 J. MO. B. 15, 15 (1997) (indicating that "[s]ince 1989, riverboat gaming has been approved in many midwestern states, including Iowa, Illinois, Mississippi, Louisiana, Missouri and Indiana").

¹⁵⁰See Deborah K. Owen, *Internet Law Institute: Advertising Issues*, 482 PLI/PAT 713, 756-57 (1997) (indicating that Minnesota had filed 6 suits relating to on-line gambling); *Wisconsin Sues Over Internet Gambling*, N.Y. TIMES, Sept. 16, 1997 (reporting that gambling prosecutions were implemented against an Idaho tribe, and companies in California, Colorado, Connecticut and Nevada who had set up on-line casinos); *Pennsylvania Superior Court Denies Extradition of IGC CEO to Missouri Court*, BUS. WIRE, Nov. 26, 1997 (indicating attempt by Missouri to obtain extradition of Pennsylvania Internet gambling operator); Peter H. Lewis, *Lawmakers Gear Up to Try to Control the Surging On-line Gambling Industry*, N.Y. TIMES ABSTRACTS 4, Sept. 22, 1997, at D5, available in 1997 WL 8004283 (reporting that "recent setbacks in trying to ban sex-related material on the Internet" has led states such as Minnesota, Missouri and Wisconsin to prosecute on-line casinos); *Attorneys General Fight Internet Gambling*, 1997-SEPT NAAGAGB (explaining that several attorney generals have gone before the United States Senate Committee on Judiciary to assist in passing federal Internet gambling legislation); *States Challenge Internet Gaming*, 1997-OCT NAAGGDB 2 (depicting state suits filed in South Dakota, Wisconsin, and Missouri). *But see Wisconsin Sued for Blocking an Internet Gambling Company*, N.Y. TIMES, May 9, 1997 (discussing a federal law suit that had been filed against a state for precluding an Internet site meant to serve overseas gamblers).

the operators of gambling sites than apprehending residents who place wagers.¹⁵¹ Prosecutors rationalize that citizens are victims or potential victims of an unwelcome and unregulated venture.¹⁵²

Fallout from the *Granite Gate Resorts* decision has resulted in the mass exodus of web site operators from the United States, choosing instead to set up sites in more favorable jurisdictions, such as Antigua, Belize, Costa Rica, Curacao, Dominican Republic, Grenada, and Liechtenstein.¹⁵³ The reasons for this exodus are that countries selected as a domicile of choice by on-line gaming operators often have more favorable tax laws, fewer legal impediments to setting up web sites, and no applicable extradition treaties with the United States.¹⁵⁴

¹⁵¹See Braun, *supra* note 24 (reporting that the “proposed law seeks to protect the right of citizens in each state to decide through their state legislatures if they want to allow gambling within their borders”).

¹⁵²See Weiser, *supra* note 33 (reporting that the federal government had not charged “any bettors who used Internet sites, but that the prosecution [of operators] should serve as a warning that such activity is illegal”). Arguably, enforcement problems alone may preclude suits against individuals. See Goodman, *supra* note 16, at 482-84 (depicting the difficulty law enforcement agencies have had in keeping up on cybercrimes). Given the sheer number of wagers which may be placed within minutes on any one site, law enforcement agencies would wind up pursuing an inexhaustible supply of small time bettors, while a hundred or so sites continue to reap the benefits of the millions who cannot be caught. See *supra* note 38 (explaining that thousands of bets may be placed within minutes on the Internet).

¹⁵³See *Minnesota v. Granite Gate Resorts, Inc.*, 568 N.W.2 715, 717 (Minn. Ct. App. 1997) (discussing WagerNet’s Belizian operation); Fineman, *supra* note 11 (remarking that on-line gambling sites are virtual unknown to most Antiguans, despite the fact that they generate millions of dollars a month for their owners, yet pay no taxes, but are required to purchase a license each year for \$100,000 from the government); Pulley, *supra* note 149 (reporting that Curacao, the tiny island nation North of Venezuela, is home to numerous bookies); Weiser, *supra* note 33 (noting that the Antigua, Costa Rica, and the Dominican Republic); *Betting Money on the Web*, N.Y. TIMES, Mar. 5, 1998, (reporting on sites domiciled in Antigua, Costa Rica, Curacao, Grenada, and Lichtenstein); *Internet Gaming Exec Opposes Efforts to Ban Cybergambling*, DOW JONES NEWS SERV., Dec. 8, 1997 (indicating that a Costa Rican gambling site expected annual revenues of \$80 million in 1997).

¹⁵⁴See, e.g., Pulley, *supra* note 149 (indicating that “[o]f the approximately 60 offshore sports books in operation throughout the Caribbean and Central America, 25 are based in Antigua, according to local officials, who in 1994 created a free trade zone where the bookies can operate without paying corporate taxes”).

D. FEDERAL APPLICATION AND PRESCRIPTION—CAN INTERNET GAMBLING SURVIVE THE OVERARCHING POWER OF THE UNITED STATES?

Relocation has not proven to be foolproof. On March 4, 1998, the United States Attorney for the Southern District of New York brought charges against fourteen United States citizens for operating offshore gambling sites in the first federal prosecution involving on-line gambling.¹⁵⁵ While several of the defendants were apprehended within the United States, others residing beyond the borders have been asked to surrender to authorities. The lack of applicable extradition agreements with many nations harboring gaming-site operators will likely preclude effective prosecution.¹⁵⁶ Interestingly, as this federal prosecution proceeds, lawmakers in the Senate may cast their votes to amend the Interstate Wire Act¹⁵⁷ to explicitly prohibit on-line gambling throughout the country.¹⁵⁸

¹⁵⁵See Weiser, *supra* note 33 (indicating that those charged could face fines up to \$250,000 and prison terms of up to five years). Also note that this prosecution may not be what it appears. Apparently, the indictments charge violations of the Interstate Wire Act based on the use of telephones, thus the government may have avoided the issue of the Internet entirely.

¹⁵⁶See Friedman and Bissinger, *supra* note 18, at 9 (arguing that many computer crimes are not extraditable offenses).

¹⁵⁷See 18 U.S.C. § 1084 (West 1998). The current language of Interstate Wire Act states in part:

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 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 placing of bets or wagers, shall be fined under this title or imprisoned. . . .

18 U.S.C. § 1084(a) (West 1998); *see also* Appendix A for a draft of the proposed amendment.

¹⁵⁸Many believe that the present language of the Interstate Wire Act is sufficient to include Internet gambling, while others including many members of United States Senate disagree. *See* Allard and Kass, *supra* note 11, at 610 (explaining that despite the fact that the act "certainly applies to the Internet, it is significantly limited by the requirements that (1) the bet pertain to sporting events or contests, and (2) that the defendant be engaged in the business of betting or wagering. These loopholes have led many to push for new legislation to prohibit gambling on the Internet"); Gorman and Loo, *supra* note 19, at 670-74 (arguing that the current form of the law applies to operators of sites, but not to Internet Service Pro-

IV. THE PROPOSED INTERNET GAMBLING PROHIBITION ACT OF 1997

The Internet Gambling Prohibition Act of 1997 (hereinafter the "Senate Bill" or "the Bill"),¹⁵⁹ was introduced as Senate Bill S. 474 on March 3, 1997 as an amendment to Sections 1081 and 1984 of Title 18 of the United States Code.¹⁶⁰ Senator Jon Kyl (R., Arizona), chairperson of the technology subcommittee of the Senate Judiciary Committee, led the charge on this latest attempt to regulate Cyberspace.¹⁶¹ The bill was a culmination of numerous studies and committee work which attempted to devise a plan to address the growing concern over the unregulated Internet gambling industry.¹⁶² The spon-

viders or users); *Executive Summary of Internet Gambling Report*, 1996-JUN NAAGGDB 12 (articulating that the Internet Gambling Staff Subcommittee recommended the act should be "amended to more directly address Internet gambling"); cf. Adams, *supra* note 23, at 1027-28 (demonstrating that the provisions of the act failed to prevent "interstate lottery ticket messenger services" in many cases). The Southern District of New York may be forced to reconcile the issue even before Legislature reaches a decision on the amendment in light of the recent indictments there. See Weiser, *supra* note 33.

¹⁵⁹Please see Appendix A for the full text of the Senate Bill, S. 474.

¹⁶⁰See *Internet Gambling Legislation Introduced on Capitol Hill*, *supra* note 23, at 6.

¹⁶¹See Geof Wheelwright, *Odds Improve on Internet Gaming*, FIN. POST IT1, Dec. 20, 1997, available in 1997 WL 16379062 (indicating that Senator Kyl's bill has a good chance of passing in the Senate). Wheelwright's article postulates that a Nevada senator supporting the bill may seem "hypocritical," however, Senator Bryan explains that "unregulated or poorly regulated gaming is a problem. No community should allow gaming without having a solid regulatory structure in place." *Id.* (quoting Senator Richard Bryan, a former attorney general and governor of Nevada).

The House of Representatives introduced H.R. 2380 in September of 1997. Congressmen Robert Goodlatte (R-Va) and Frank LoBiondo (R-NJ) introduced a version of the Internet Gambling Prohibition Act to the House of Representatives on September 3, 1997. See Braun, *supra* note 24. The tentative text of the bills are virtually identical; however, S. 474 indicates that fines may be as high as \$10,000 with possible imprisonment of up to two years, whereas H.R. 2380 makes no reference to fines, yet has possible imprisonment of up to four years.

¹⁶²See generally *Senate Judiciary Committee Approves Internet Gaming Prohibition Act*, 1997-OCT NAAGGDB 1 (noting that the bill went through numerous revisions and compromises, the bills current structure would result in a complete ban on Internet gambling); Kass, *supra* note 11, at 609-10 (indicating that state states had been pressuring the federal government to address the issue); *National Gambling Impact Study Commission Meets*, 1997-AUG NAAGGDB 1; *Internet Gambling Legislation Introduced on Capitol Hill*, *supra* note 23, at 6; *NIGC Announces Hearing on Internet Gambling*, U.S. NEWSWIRE, Oct. 10, 1997, avail-

sors of the Bill argued that regulation alone would not suffice due to enforcement problems and state entanglement.¹⁶³ The lawmakers implied that there would be no effective way to monitor the on-line industry due to a lack of appropriate enforcement technologies.¹⁶⁴ The sponsors also feared that the significant variations in state gambling laws would pose an insurmountable burden to regulators in deciphering permissive uses.¹⁶⁵ Thus, an outright ban of Internet wagering was included in the proposed bill.¹⁶⁶

If passed, the amendments will ensure a uniform approach to criminal liability within the United States, thereby creating predictability of liability and eliminating interstate disputes as to the legality of on-line gambling.¹⁶⁷ Additionally, the act specifically delegates power to the President and Secretary of State to negotiate internationally to enforce the Act.¹⁶⁸ On October 23, 1997, the bill was returned to the Senate for placement on the Legislative Calendar after slight modification by the Committee on Judiciary.¹⁶⁹

able in 1997 WL 13913612 (reporting that the National Indian Gaming Commission (NIGC) held an open forum discussion with government and private interests represented); *President Signs Bill Establishing Gambling Commission*, 1996-AUG NAAGDB 1 (noting the creation of the National Gambling Impact and Policy Commission Act of 1996 which addressed, in part, Internet gaming).

¹⁶³See Peter Lewis, *Can Lawmakers Control Online Gambling?*, N.Y. TIMES, Sept. 22, 1997.

¹⁶⁴See *id.*

¹⁶⁵See *id.*

¹⁶⁶Senator Bryan, in explaining why a complete ban was necessary, conceded that "[i]t is equally clear that there is no effective way of regulating Internet gaming." Lewis *supra* note 163 (quoting Senator Bryan of Nevada, a co-sponsor of the act).

¹⁶⁷Creating an absolute ban on Internet Gambling, pursuant to the power to regulate interstate commerce, would result in no state with an inconsistent rule. See *id.*; U.S. CONST. art. I § 8 (the Commerce Clause); U.S. CONST. art. VI ¶ 2 (the Supremacy Clause); Hameline and Miles, *supra* note 50, at 9 (discussing Dormant Commerce Clause theory and Internet regulation).

¹⁶⁸See *Senate Judiciary Committee Approves Internet Gaming Prohibition Act*, *supra* note 162 (explaining that the bill would "require the Secretary of State to negotiate with foreign countries for international agreements regulating the transmission across the Internet of bets, wagers and gambling-related information"); Pietrucha, *supra* note 21 (reporting that the President would be empowered to establish international agreements to enforce the act).

¹⁶⁹See <<http://www.loc.gov/thomas>> (last visited March 16, 1998).

Although the legislation is aimed to prohibit all Internet gambling within the United States, many doubt that the legislation will actually have that effect.¹⁷⁰ Critics and many legal theorists remain convinced that jurisdictional dilemmas will continue to plague attempts at enforcement because hundreds, perhaps thousands, of Cyberspace gambling providers are located outside of United States jurisdictions.¹⁷¹ This legislation will only persuade more providers to move to "safe harbor" jurisdictions or go underground.¹⁷² In fact, as public awareness of the bill increases, virtually all known Internet gambling providers remaining within the United States have sold or relocated their sites.¹⁷³

¹⁷⁰See *supra* notes 47-52 and accompanying text; Burk, *supra* note 41, at ¶ 15 (noting that there is no effective method for a country to block out certain signals, while hosts also have the ability to transfer themselves from domicile to domicile on a daily basis, with no means to track the transfer or the true location of the operator); Montpas, *supra* note 7, at 176 (arguing that extradition will be the only way for the United States to enforce the law); Gorman and Loo, *supra* note 19, at 667-74, 684-88 (contending that while Internet gambling may be illegal, there are significant hurdles to effective enforcement especially once extra-territorial application of federal legislation is attempted).

¹⁷¹Commentators Gorman and Loo, *supra* note 19, explain that:

The first step in determining whether United States laws apply extraterritorially is to look at the express language of the law and the congressional intent. The next is to determine whether enforcement or application of the United States law conflicts with protections afforded internationally. For instance, enforcement of bank records may conflict when the bank exists in another country and that country's laws protect bank records from subpoena. . . . The American Law Institute's Third Restatement of the Foreign Relations Law of the United States recommends that when a conflict arises, courts should perform a balancing analysis of the many concerns involved. This balancing rests on the foundation of the principles of comity and sovereignty so that courts reasonably limit their exercise of jurisdiction. However, courts have traditionally abstained from hearing those cases which will call into question the wisdom or validity of a foreign sovereign's laws or protections.

Gorman and Loo, *supra* note 19, at 686-88 (citations omitted).

¹⁷²See *supra* note 139 explaining that other jurisdictions offer more favorable opportunities for Internet gambling operators.

¹⁷³See, e.g., P.J. Huffstutter, *Orange County Briefly WWW Casinos Sells to South Africa Firm*, L.A. TIMES, Feb. 6, 1998, at D6, available in 1998 WL 2395984 (reporting that a Santa Anna based firm sold its on-line gaming business, blaming both financial problems and "strict gaming legislation"); Pulley, *supra* note 149 (reporting that "[w]agering on sports is illegal in the United States, except in Nevada and Oregon. But over the past two years, . . . bookmakers have packed up their lists of customers and traveled south" to countries with less strict regulations); John Wilen, *Embattled Web Gambling Firm to Sell Sub-*

Having driven all providers beyond United States borders,¹⁷⁴ a convenient solution is becoming less practical. The common theme throughout discussions of Cyberspace regulation has been the principle that geographical boundaries do not necessarily provide insulation from Internet crimes.¹⁷⁵ The question remains, how does a nation or state provide protection to its citizenry?

V. WORLD WIDE PROBLEMS NEED GLOBAL SOLUTIONS

An international convention on Internet gambling would undoubtedly provide the most appealing solution, provided that an agreement with meaningful standards could be reached.¹⁷⁶ A realistic attempt for a successful multi-lateral convention could most effectively be realized with the input of both government and private interests, such as the casino, sports, and entertainment industries.¹⁷⁷ Faced with the potential for dwindling customers or scandalous reports of point shaving, these industries may be convinced that their vast resources should be invested in attempts at shrinking the on-line gambling industry.¹⁷⁸

sidiaries, PHILA. BUS. J. 1, Dec. 12, 1997, available in 1997 WL 16135988 (depicting a Missouri operator who was compelled by constant litigation to sell its Granada based gambling site to a Canadian corporation).

¹⁷⁴See *Tribe's Operation Earned \$8 Million Last Year*, DOW JONES NEWS SERV., Feb. 4, 1998. Tribes such as the Coeur d'Alene remain committed to their Internet Gambling sites; however, their fate remains uncertain given the possible interpretations of Federal law. See *id.*

¹⁷⁵See Wilske and Schiller, *supra* note 61, at 120-23 (recognizing the need for regulation in light of rising levels of cybercrimes).

¹⁷⁶The World Intellectual Property Organization (WIPO) has recently developed and had some success in creating conventions dealing with proprietary rights on the Internet. See Bruce G. Joseph, *The New WIPO Copyright and Phonograms Treaties: Twenty-One Days in Geneva and The Return to Washington*, 488 PLI/PAT 371, 373-76 (1997).

¹⁷⁷See DAVID HUNTER, ET AL., INTERNATIONAL ENVIRONMENTAL LAW & POLICY, Foundation Press (Chapter on Air and Atmosphere in forthcoming text). The success of the Vienna Convention for the Protection of the Ozone Layer (1985), UNEP Doc. IG.53/5; 26 I.L.M. 1529 (1987), was credited in large part to the American manufacturers who agreed to phase out the products while also developing replacements, with the added incentive of guaranteed market shares. Other attempts at conventions are not as successful due to the lack of adequate incentives on the part of signatories and powerful domestic and international interest groups. See *id.*

¹⁷⁸See *supra* note 6 and accompanying text (explaining the epidemic of on-line gambling as it relates to organized athletics).

Given the odds against the development of an international convention on Internet gambling in the near future, an alternative and immediate solution must be found.¹⁷⁹ Hegemonic forces, wielded through tariffs and embargoes, could provide a certain deterrent effect upon the handful of Caribbean Islands which have embraced the benefits of on-line gaming. However, such tactics prove to engender little support in the sophisticated realm of international public policy.¹⁸⁰

Internationally, sovereign states have the ability to submit disputes to the International Court of Justice at the Hague.¹⁸¹ If, for example, the United States sought to persuade Antigua to stop the web sites it licenses from accepting wagers from United States nationals, the United States could request the International Court of Justice to hear the case and deliver an opinion.¹⁸² Suits before this court are limited to those involving nation-states; thus, no individuals or non-governments can appear before it.¹⁸³ Moreover, the claim brought must be one that is cognizable in international law. In other words, there must be some basis for the assertion that a wrongful act has occurred which may be

¹⁷⁹Given the divergent views of gambling among sovereign nations, if a treaty could be developed in the near future, it is likely that only sporadic enforcement could be expected in the short run. See Fineman, *supra* note 11 (intimating that Caribbean nations would be less than cooperative in an attempt to ban Internet gambling); Friedman and Bissinger, *supra* note 18, at 9 (depicting British Internet gambling site operators who have infiltrated Japanese markets where gambling is illegal); Lewis, *supra* note 163 (explaining that numerous nations, including New Zealand, Canada, and Australia, support regulating the online gambling industry rather than conceding to an outright ban).

¹⁸⁰Analogously, the United States' continued embargo against Cuba, which is targeted at the communist Castro regime, has continued to engender global criticism. See Jack Nelson, *Embargo of Cuba Exact a "Tragic Human Toll," Health Report Charges Sanctions: Study Finds Increasing Suffering and Deaths as a Result of U.S. Actions—Chilling Effect of Helms-Burton is Cited.*, L.A. TIMES, Mar. 3, 1997, at A4, available in 1997 WL 2187664.

¹⁸¹Article 36(1) of the Statute of the International Court of Justice provides that states may submit disputes through a *compromis*, special agreement, or they may have previously agreed to submit any disputes pursuant to the terms of a specific treaty in a compromissory clause. See LOUIS HENKIN, ET AL., INTERNATIONAL LAW, 3d, 807 (1993) (quoting Shabtai Rosenne, *The Law and Practice of the International Court*, 332-35, 344, 357-59 (1965)).

¹⁸²See Henkin, *supra* note 181 (citing Statute of the ICJ Art. 38(2)). Note that parties are not compelled to appear before this court, instead disputes are submitted by consent and the opinions of the International Court of Justice do not constitute *stare decisis* for any other matters. See *id.* at 120 (citing Statute of the ICJ Art. 59).

¹⁸³See *id.* at 807 (explaining that contentious cases may only be brought by states, not international organizations or private persons).

remedied by international law. This is often done by demonstrating that nationals of the petitioning state have been harmed in some way¹⁸⁴ and that the respondent state is responsible.¹⁸⁵ Unfortunately, many states might not readily submit an Internet gambling dispute to the International Court of Justice, especially given that the court only hears approximately two cases each year, thus many disputes may be left in the hands of diplomats.¹⁸⁶

In light of the magnitude of enforcement problems, numerous countries have expressed prudent desires to levy taxes upon the multi-billion dollar industry.¹⁸⁷ However, the ability to collect taxes would certainly face many, if not more, of the basic regulatory concerns already at issue. Perhaps the only advantage of an international tax would be the increased cooperation between nations and web page operators who seek the protection of those nations.¹⁸⁸ As

¹⁸⁴See *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 795-96 (1993) (explaining that there are circumstances where conduct in another nation may be restrained where it has a substantial effect in the prescribing jurisdiction); *Schooner Exch. v. McFaddon*, 11 U.S. 116, 136 (1812) (“The jurisdiction of the nation within its own territory is necessarily exclusive and absolute.”). In the international arena, principles of jurisdiction tend to be governed by notions of impact on nationals of a state, either through direct invasions of physical territory, the principle of territoriality, or through the effects of conduct occurring beyond the territory of the state, the protective principle). *See id.*

¹⁸⁵William T. Way Claim (*United States v. Mexico*), 4 U.N. Rep. Int’l Arbitral Awards 391 (1928-29) (determining that Mexico was directly responsible on an international level for the murder of a United States national where a Mexican police officer performed the wrongful act). The doctrine of State Responsibility in international law enables a state to be held responsible for the harm inflicted upon foreigners by its nationals, most often involving either a failure to regulate properly, conduct of a state official, or other reasonable inference of responsibility. *See id.*

¹⁸⁶See Henkin, *supra* note 181, at 806-07 (explaining that “[d]uring the period 1946-1991, the Court had 86 cases presented to it. It rendered 52 judgments and 21 advisory opinions”).

¹⁸⁷See Blau, *supra* note 9, at 73 (raising issues of taxation and legality of on-line gambling).

¹⁸⁸Seeking the protection of the laws of a nation in exchange for monetary incentives could prove to be an advantage to many gambling site operators who have been on the run from multiple jurisdictions. *See supra* notes 153-154 (discussing the flight of operators). However, in light of the previous discussions regarding the virtual impossibility of regulating the Net at the present time, taxation would require an enormous amount of self-regulation and voluntary submission to jurisdictions that may lack the sophistication or resources to launch a “peacekeeping mission” into Cyberspace. *See supra* note 134 (discussing the way in which the Internet has enabled less commercially sophisticated players into the global marketplace).

indicated earlier, attempts have begun within the industry to self regulate, yet domestic gambling endeavors indicate a poor likelihood of the success of such a bold endeavor.¹⁸⁹

The United States may already have developed a domestic solution to the recalcitrant industry, burdening the Internet Service Provider (hereinafter "ISP") with the threat of prosecution.¹⁹⁰ The Telecommunications Act of 1996¹⁹¹ already paved the way for prosecution of ISP's for knowingly transmitting material deemed unfit for children.¹⁹² While the notion of regulating access to certain web pages appealed to the legislature, it was summarily rejected

¹⁸⁹In New Jersey, the second state which restored gambling in the November of 1976, the courts have addressed numerous regulations governing the industry. See N.J. CONST. art. IV, § 7, ¶ 2D; *Greenberg v. Kimmelman*, 99 N.J. 552, 558, 494 A.2d 294, 297 (1985) (upholding New Jersey's Casino Ethics Amendment which barred the wife of state court judge from working in a casino). Addressing the merit of a casino regulation, the Supreme Court of New Jersey explained in *Greenberg* that, "[regulation] seeks further to sanitize casino gambling and its potentially corrupting effects upon government. Gambling is an activity rife with evil, so prepotent its mischief in terms of public welfare and morality that it is governed directly by the Constitution itself." *Greenberg*, 99 N.J. at 561, 494 A.2d at 298-99 (citing N.J. CONST. art. IV, § 7, ¶ 2).

The New York Senate approved a bill on March 11, 1998, to address on-line gambling; however, the legislation has been referred to as a "farce" by a state senator who indicated that he "think[s] it makes us look like the biggest fools in the country." *N.Y. Senate Targets Web Site Gaming*, ASBURY PARK PRESS, Mar. 12., 1998, at A9 (quoting New York Senator Emanuel Gold). The senator's commentary related to the enforcement provisions of the bill which sought to regulate Internet gambling by requesting that any sites which seek to engage in a "significant" amount of business from residents should register with the state. See *id.* Apparently, the benefit of registration was the state's ability to monitor operators and locate them for service of process. See *id.* Moreover, Senator Gold further chastised that bill because "[i]t's the first time in history that I know of that we have suggested passing a law to make somebody file a certificate of authority that's not issued. It's just childish." *Id.* Senator Gold's criticism is well articulated, for despite a seemingly fair request for registration, Internet gambling is most likely illegal under federal law, thus to register would undoubtedly bring about a federal prosecution if not a state summons.

¹⁹⁰See generally, April Mara Major, *Internet Red Light Districts: A Domain Name Proposal For Regulatory Zoning of Obscene Content*, 16 J. MARSHALL J. COMPUTER & INFO. L. 21, 25-27 (1997) (explaining that the regulation of domain names, possibly under the International Ad Hoc Committee, could provide a method of limiting access to certain types of sites).

¹⁹¹Pub.L. 104-104, 110 Stat. 56.

¹⁹²See *Reno v. ACLU*, 117 S. Ct. 2329, 2337-38 (1997) (discussing the First Amendment concerns pertaining to Title V of the enactment, the Communications Decency Act of 1996).

by the court as “not ‘technically or economically feasible for most providers.’”¹⁹³ Perhaps computer hardware and software developers could be provided with sufficient monetary incentives to devise a system to identify and screen Internet gambling sites. If gambling sites are required to be licensed in other nations, surely there must be access to the identity of those who obtain licenses.¹⁹⁴ Once a license is identified, the site could be tracked down and the ISP’s could be requested by interested nations to block access to their nationals; thereby eliminating access by all users who require an ISP to gain access to Cyberspace.

As an alternative solution, law enforcement officials could target Internet users who place wagers. The use of information campaigns, warning users of the dangers of Internet gambling, and selective prosecutions to discourage Internet gambling. This method may gain some notoriety, but it may be virtually impossible to discover individual gamblers because they never need to leave their homes to commit the crime. Furthermore, an informational campaign designed to enlighten web surfers to the dangers of cyberfraud seems like a beneficial endeavor, but on-line gamblers are already engaged in illegal conduct and presumably are aware of the inherent risks of fraud over the Web.

Essentially, even with the ratification of a multilateral treaty, governments may be unable to protect their citizens from fraudulent activities. Absent the advent of effective technologies to detect and track internet gambling transactions, those who choose to wager on Internet gambling may find themselves unable to obtain relief when they are unable to cash out . . . *Caveat cybernaut!*

¹⁹³See *id.* at 2339 (quoting *ACLU v. Reno*, 929 F. Supp. 824, 856 (E.D. Pa. 1996)). The district court wrote:

But as the evidence made clear, there is no such technology at this time. The government proffered as one option that would constitute a valid affirmative defense under § 223(e)(5)(A) a “tagging” scheme conceived by Dr. Olsen in response to this lawsuit whereby a string of characters would be imbedded in all arguably indecent or patently offensive material. Our Findings of Fact set forth fully the reasons why we found that the feasibility and effectiveness of tagging in the manner proposed by the government has not been established. All parties agree that tagging alone does nothing to prevent children from accessing potentially indecent material, because it depends upon the cooperation of third parties to block the material on which the tags are embedded. Yet these third parties, over which the content providers have no control, are not subject to the CDA.

ACLU v. Reno, 929 F. Supp. 824, 856 (E.D. Pa. 1996).

¹⁹⁴See *supra* note 37 (discussing licensing and checks on internet gambling operators in other countries).

APPENDIX —A

The text of the Senate Bill is set forth below as downloaded from the Library of Congress web page: <http://www.thomas.loc.gov>,

1st Session

S.474

To amend sections 1081 and 1084 of title 19, United States Code.

IN THE SENATE OF THE UNITED STATES

March 19, 1997

Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. HUTCHINSON, Mr. GRASSLEY, Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend sections 1081 and 1084 of title 19, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Internet Gambling Prohibition Act of 1997'.

SECTION 2. DEFINITIONS.

Section 1081 of title 18, United States Code, is amended—

(1) in the matter immediately following the colon, by designating the first 5 undesignated paragraphs as paragraphs (1) through (5), respectively, and indenting each paragraph accordingly;

(2) in paragraph (5), as so designated—

(A) by striking 'wire communication' and inserting 'communication';

(B) by striking 'transmission of writings' and inserting 'transmission or receipt of data, electromagnetic, photo-optical, photoelectric, or other similar facility'; and

(C) by striking 'or other like' and all that follows before the period and inserting 'radio, electromagnetic, photo-optical, photoelectric, or other similar facility'; and

(3) by adding at the end the following term:

'(6) **BETS OR WAGERS-** The term 'bets or wagers'—

'(A) means the staking or risking by any person of something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

'(B) includes the purchase of a chance or opportunity to win a lottery or other prize;

and

'(C) does not include—

'(I) a bona fide business transaction governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) for the purchase or sale at a future date of securities (as that term is defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)));

'(ii) a contract of indemnity or guarantee; or

'(iii) a contract for life, health, or accident insurance.'

SEC. 3. TRANSMISSION OF WAGERING INFORMATION; PENALTIES.

Section 1084 of title 18, United States Code, is amended—

(1) by striking subsections (a) and (b) and inserting the following:

'(a) IN GENERAL-

'(1) PERSONS ENGAGED IN THE BUSINESS OF BETTING OR WAGERING
Whoever, being engaged in the business of betting or wagering knowingly uses a communication facility for the transmission or receipt in interstate or foreign commerce of bets or wagers, information assisting in the placing of bets or wagers, or a communication that entitles the transmission or receiver to the opportunity to receive money or credit as a result of bets or wagers, shall be fined not more than \$10,000, imprisoned not more than 2 years, or both.

'(2) OTHER PERSONS- Whoever (other than a person described in paragraph (1)) knowingly uses a communication facility for the transmission or receipt in interstate or foreign commerce of bets or wagers, information assisting in the placing of bets or wagers, or a communication that entitles the transmitter or receiver to the opportunity to receive money or credit as a result of bets or wagers, shall be fined not more than \$5,000, imprisoned not more than 1 year, or both.

'(b) EXCEPTIONS-

'(1) NEWS REPORTING; LEGAL BETS AND WAGERS- Nothing in this section shall be construed to prohibit the transmission or receipt in interstate or foreign commerce any information—

'(A) for use in the news reporting of any activity, event, or contest upon which bets or wagers are based; or

'(B) relating to the placing of bets or wagers, if such betting or wagering—

'(i) is legal in the state or foreign country in which the transmission originates; and

'(ii) is legal in each State and each foreign country in which the transmission is received.

'(2) STATE LAW- Nothing in this section shall be construed to preempt any State Law.'; and

(2) in subsection (d)—

(A) by striking '(d) When' and inserting the following:

'(d) DUTIES OF COMMON CARRIERS AND INTERACTIVE COMPUTER SERVICE PROVIDERS-

'(1) IN GENERAL- If;

(B) by inserting 'or interactive computer service provider' after 'common carrier' each place that term appears;

(C) by striking 'Nothing' and inserting the following:

'(3) JUDICIAL ACTION- Nothing'; and

(D) by inserting after paragraph (1), as so designated by subparagraph (A) of this paragraph, the following:

'(2) INJUNCTIVE RELIEF- Any Federal, State, or local law enforcement agency acting within its jurisdiction, shall have the authority, following the issuance of notice under paragraph (1), to seek an injunction or other appropriate relief from a Federal or State court of competent jurisdiction barring access to the communication facility at issue or preventing the use of such facility for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State, or local law.'

SEC. 4. SENSE OF THE SENATE.

It is the sense of the Senate that the Federal Government should have extraterritorial jurisdiction over the transmission to or receipt from the United States of—

(1) bets or wagers (as that term is defined in section 1081 of title 18, United States Code);

(2) information assisting in the placing of bets or wagers; and

(3) any communication that entitles the transmitter or recipient to the opportunity to receive money or credit as a result of bets or wagers.

SEC. 5. REPORT.

No later than 360 days after the date of enactment of this Act, the Attorney General shall submit a report to Congress that includes—

(1) an analysis of the problems, if any, associated with enforcing section 1084 of title 18, United States Code, as amended by this Act;

(2) recommendations for the best use of the resources of the Department of Justice to enforce that section;

(3) recommendations for the best use of the resources of the Federal Communications Commission to enforce that section; and

(4) an estimate of the amount of activity and money being used to gamble on the Internet (as that term is defined in section 230(e)(1) of the Communications Act of 1934 (47 U.S.C. 230(e)(1)).