

The Benefits of Age Verification for Online Gambling

By: Lawrence G. Walters, Esq.

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Recently, significant attention has been drawn to the issue of age verification for online gambling services, as a result of the U.K. study performed by GamCare, Citizencard and the Children's Charities Coalition on Internet Safety.¹ That article demonstrated that 30 of 37 online casinos and betting sites that were tested allowed minors to set up accounts. The accounts were setup using a debit card, with the minor giving their accurate address and personal information, but indicating that they were of legal age to gamble.² For the purpose of the study, a site "passed" if the account was blocked or a request was made for further proof of age and I.D., after the registration process was complete. Failing sites simply allowed the user to log on and gamble.³

This state of affairs demonstrates a critical need for some form of workable age verification for gaming Websites. Since minors are gaining increasing access to credit cards issued by various different merchant banks, credit cards can no longer be used as a form of age verification for online transactions. Moreover, VISA has notified webmasters that it specifically objects to the use of its credit cards for purposes of age verification. Therefore, it is time for an innovative solution to the vexing problem of online age verification for gaming Websites.

The adult Internet industry was faced with a similar crisis, several times in the past, when the United States government passed legislation mandating the implementation of age

¹ Staff, "New Research Shows that Minors Have Easy Access to Online Gambling Services," *IGamingNews.com* (July 27, 2004) located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5250>.

² Kevin Smith, "Operators Respond Differently to UK Report on Underage Gambling," *IGamingNews.com* (July 29, 2004) located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5256>.

³ Staff, "New Research Shows that Minors Have Easy Access to Online Gambling Services," *IGamingNews.com* (July 27, 2004) located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5250>.

verification procedures for access to sexually explicit material on the Internet.⁴ Although the law has been enjoined as unconstitutional on several occasions by the federal courts, many adult Websites sought a solution to the online age verification problem, and this author responded.

Development of the BirthDateVerifier™

Several criteria were used in the development of a workable age verification solution: 1) the verification must be immediate, and the device easy to use; 2) the device must perform some manner of “verification” of the user’s age data provided; 3) some incentive must be created for the user providing accurate and truthful age data; and 4) the device must function effectively world wide, without reference to the user’s location.

Using the above-referenced criteria, this author developed the [Birth Date Verifier](#), which uses a unique combination of the Electronic Signatures Act⁵ (“E-Sign Act”) and the Unsworn Declarations Act⁶ to create a procedure whereby the user submits the equivalent of an electronic affidavit, attesting to his or her date of birth under the penalties of perjury, and stipulating to the use of U.S. law to accomplish this task. The birth date data provided by the user is then checked against the current date as recorded on the server, to calculate the actual age of the individual on that particular day. Once it is verified that the user’s sworn data make him or her an adult, i.e., over the age of 18, the user is allowed entry to the age restricted portions of the site.

A number of adult Websites have adopted the [Birth Date Verifier](#) device as the preferred method of age verification, and a partial list of those sites can be found [here](#). Version 4.0 of the software includes a gaming-specific age verification page, which can be seen in operation [here](#). Under well recognized “choice of law” principles, a party to a given transaction – even an electronic transaction – can agree to use the laws of a specific jurisdiction to govern that

⁴ See: The Child Online Protection Act, Title __ U.S.C. § __.

⁵ Title 15 U.S.C. § 7000 et seq.

⁶ Title 28 U.S.C. § 1746.

particular transaction. When using the [Birth Date Verifier](#), the user stipulates to the application of U.S. law for purposes of online age verification only, in order to incorporate the E-Sign Act and the Unsworn Declarations Act. Of course the choice of law provision will not be necessary for U.S.-based users, who are already subject to U.S. law, but it allows gaming sites to use these unique legal provisions for players around the world.

The online affidavit requires that the birth date information submitted on the site be accurate, under the penalties of perjury. In other words, providing false information would constitute a federal felony. Courts are not sympathetic to the claims of minors, who commit felonious acts through perjurious online transactions. Any minor gaining access to the gambling services would, by definition, be committing the crime of perjury and thus would not make a particularly sympathetic victim as compared to the responsible gaming webmaster who is attempting to implement the best age verification device available under current technology.

Of course, like any other new device dependant on legal principles, these theories are all untested. The best scenario would be for the device to remain untested, and for no client to be prosecuted for violation of any age restriction applicable to online services. However, given the recent attention to access by minors to gaming services, it is likely only a matter of time before one or more governmental entities take notice and initiate investigation or prosecution based on access to gaming sites by minors. Notably, given the criteria used by the U.K. study referenced above, the [Birth Date Verifier](#) would constitute the subsequent proof of age check required to obtain a passing grade.

While there have been few historical prosecutions based on direct age restrictions, any violation of the law by an online gambling site can be exacerbated, and defenses weakened, if minors are provided unfettered access to online gaming services. Judges, juries and prosecutors

are often less sympathetic to the claims and defenses of those who do nothing to keep age restricted materials away from children, even if such issues are never brought to the forefront in a particular prosecution. Therefore, it is in the best interests of all gaming site operators to consider a viable form of online age verification to strengthen their legal position from top to bottom. It is only a matter of time before alternative forms of online age verification are developed – whether based on finger print transmission, retina scanning or other advanced technology. However, until the technology progresses to such a point where these methods are readily available, the [Birth Date Verifier](#) provides a viable option for online gambling sites to impose a barrier to minors’ access to gambling services.

Lawrence G. Walters, Esq., is a partner in the national law firm of Weston Garrou & DeWitt, with offices in Orlando, Los Angeles, and San Diego. The [Birth Date Verifier](#) is copyrighted with the U.S. Copyright Office, and is the subject of a pending patent application with the U.S. Patent and Trademark Office. All rights reserved. Mr. Walters represents clients involved in all aspects of online gaming operations. Nothing in this article constitutes legal advice. Please contact your personal attorney with specific legal questions. Mr. Walters can be reached at Larry@LawrenceWalters.com, through his website: www.GameAttorneys.com, or via AOL Screen Name: “Webattorney.”