

Gambling Law Update™
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KYLE BILL MOVES AHEAD

In just a matter of minutes, the United States Senate Banking Committee passed S.627, after the chairman of the committee introduced the bill and asked the Committee to approve the amendments he had already made to it. Proposed by Sen. Jon Kyl (R-Ariz.) and dubbed the Internet gambling prohibition bill, the legislation would prohibit gambling businesses from accepting credit card, electronic fund transfer or other payment methods from gamblers who bet illegally over the Internet. The bill also would set civil and criminal penalties for Internet gambling and would modify the federal criminal code to include satellite, microwave and other communications from fixed or mobile sources. The bill's primary goal is to give U.S. law enforcement a more effective tool for fighting offshore Internet gambling sites that illegally offer their services to Americans. In June, the House overwhelmingly passed H.R. 2143, legislation that would prohibit gambling businesses from accepting credit card payments and other bank instruments from Internet gamblers. Conversely, critical to the House bill's passage was the removal of criminal provisions that are at the center of Kyl's Bill. However, at the last Panel hearing on S. 627, held in March, 2003, Stewart A. Baker, general counsel for the U.S. Internet Service Providers Association, urged the committee to avoid "unintended consequences" that may hurt the economic growth of the Internet, including requiring ISPs to block customer access to gambling sites not residing on their networks and not under their control. "Service providers are unable to block user access to websites on other service providers' networks with any

reliability," Baker said. "Blocking efforts can be easily circumvented and will seriously disrupt legitimate e-commerce and speech." The Bill is to be reported to the full Senate, although no timetable has been set.

Not So Fast...

As attempts in Congress continue in the push to ban Internet gambling, one Caribbean island is concerned the proposed law will wipe out licensed Internet casinos operating on its shores, and rob it from much-needed revenues. The Caribbean island nation of Antigua and Barbuda has succeeded in its bid to have the United States brought before the World Trade Organization (WTO) over a dispute involving Internet cross-border gambling and betting services. The WTO dispute settlement body will appoint a three-member panel to determine if United States efforts to crack down on offshore Internet gambling operations violate international trade accords. According to Sir Ronald Sanders, Antigua and Barbuda's chief foreign affairs representative, Antigua and the United States have 20 days to agree on the three panel members.¹ If they do not agree, the WTO Secretariat will appoint the panel. In the request for the establishment of a panel, Antigua and Barbuda said that while United States laws permit domestic operators to offer all types of gambling and betting services in America, foreign operators are prohibited from supplying gambling and betting services from outside the United States. This, claimed Antigua and Barbuda, constituted a violation of the General Agreement on Trade in Services (GATS) obligations under provisions within Articles VI (Domestic Regulation), VIII (Monopolies and Exclusive Service Suppliers), XI (Payments and Transfers), XVI (Market Access), XVII (National Treatment), and the United States Schedule of Specific

¹ Anne Linder, *WTO Panel to Arbitrate Antigua/US Dispute*, www.igamingnews.com (7.24.03)

Commitments.² The federal measures were hurting the island nation's internet gaming industry, a source of employment and government revenues. Internet gambling became a major part of Antigua and Barbuda's economy during the 1990's, when up to 100 different Internet gaming companies employing more than 5,000 people operated in the island nation. Today there are fewer than 40 Internet gambling companies located on the island employing half as many local residents. Island officials attribute the industry's decline in part to the United States' crackdown on the gambling industry.³ Some 54 nations, mostly in Europe and the Caribbean, have legalized regulated Internet gambling, according to the Interactive Gaming Council. Already there are signs that other countries may take sides against the United States. Several nations, including Canada, Mexico, Taiwan, and the European Union (E.U.) countries said that they would reserve their right to join the dispute on the side of Antigua and Barbuda.⁴

Eyes on the Prize

In a crowning moment for the Internet community of poker players, an accountant named Moneymaker won the World Series of Poker after qualifying in an online tournament. Advocates had aspired that the much publicized win and a \$2.5 million prize would help to inspire a new generation of poker players to play online. However, a push in Congress to restrict Internet gambling is looming and Nevada regulators are eyeing Moneymaker's win to see if online players should be prevented from competing next year. "We obviously don't like it," said Keith Copher, chief enforcement officer for the Nevada Gaming Control Board. "It's an interesting concept that we're really going to have to research and see whether we're going to allow it to happen in the

² Press Release, *Small Island State Requests Panel Against the US*, Bridges Weekly Trade News Digest, Vol.7 No. 24 www.ictsd.org/weekly/03-07-03/story5.htm (7.3.03)

³ Brian Krebs, *U.S. Internet Gambling Crackdown Sparks WTO Complaint*, www.washingtonpost.com/wp-dyn/articles/A24490-2003Jul21.html (7.21.03)

⁴ *Id.*

future.”⁵ The Justice Department considers Internet gambling illegal under the 1961 Wire Act, which was enacted to curb sports betting by telephone. The problem is that in the wake of the Wire Act’s computer age applications, electronic gambling has moved to other countries, with safe-haven links back to the United States via the Internet.⁶ Overseas Internet gambling has long vexed federal regulators, since Internet casinos and betting Websites licensed in other countries are typically beyond their reach. The money that flows through overseas licensed or unregulated gambling sites is also hard to trace, frustrating monitoring by banks and credit card companies and prompting worries about money laundering by organized crime and terrorist groups. In Moneymaker’s case, it is unclear whether his \$2.5 million win will be reviewed. Nevada officials said there does not appear to be any violations of state law since Moneymaker paid the \$10,000 buy-in and won the annual tournament at Binion’s Horseshoe legitimately.⁷

Payment Woes

With an estimated \$4 billion in revenues and more than 4.9 million Americans playing on the Internet, the industry is rapidly growing. But experts have said legal uncertainties and credit card companies that have blocked Internet gambling transactions have slowed the pace. One of the first companies to sever ties with Internet gambling merchants was PayPal. The United States Department of Justice and the online payment service, which is now owned by eBay, said in a statement that they had entered into a settlement agreement. The government claims that PayPal violated the USA Patriot Act and the Wire Act by illegally processing Internet gambling transactions for customers in the Eastern District of Missouri and elsewhere between June 2000 and November 2002. The United States Attorney’s office alleged that PayPal had provided

⁵ Associated Press, *World Wide Web: The Net Result*, www.reviewjournal.com (7.7.03)

⁶ Chuck Nowlen, *Congress Targets the “Crack Cocaine of Gaming,”* www.madison.com/captimes/news/stories/52839.php (7.15.03)

⁷ *Id.*

services to offshore sites in violation of 18 U.S. Code § 1960, which prohibits transmitting of funds “derived from a criminal offense,” and 18 U.S. Code § 1084, which relates to the transmission of information about wagers.⁸ The \$10 million settlement represents what both parties agreed represented forfeitable revenue that PayPal obtained from processing the gambling transactions. Raymond Gruender, United States Attorney for the Eastern District of Missouri, said in a statement that “offshore sportsbooks and online casino gambling operations which do business in the United States generally do so in violation of federal criminal laws. Therefore, we will continue to investigate and pursue such activity.”⁹ The USA Patriot Act, passed just six weeks after the September 11th attacks, gave federal authorities broader powers to track money laundering and monitor online activities, among other things.

The exit of PayPal from the Internet gambling industry has since sparked many other companies to follow suit for fear of prosecution. One of America’s largest banks, Bank One, recently confirmed that its customers will no longer be allowed to use their ATM and debit cards to fund Internet gambling transactions. The Chicago-based bank is the latest of several banks and credit-card issuers trying to avoid legal issues related to Internet casinos. About 50 percent to 60 percent of Internet gambling transactions made with credit cards are denied by banks or credit-card companies, according to the Interactive Gaming Council, which represents about 70 online companies. As stated in the letter sent to account holders, Bank One said it is too difficult to differentiate between legal and illegal Internet gambling transactions, so it is forced to block them all. The Bank One letter states that “because we aren't able to selectively approve transactions where Internet gambling may be legal, we have made the decision to decline all

⁸ Declan McCullagh, *PayPal Settles Over Gambling Transfers*, CNet News http://news.com/2100-1019_3-5055237.html (7.25.03)

⁹ *Id.*

payment transactions that are believed to be Internet gambling related.”¹⁰ J.P. Morgan Chase Spokeswoman Katherine Keary said the company has blocked Internet gambling transactions for two years on its credit cards because of the legal complications.¹¹ Visa, the world’s largest credit-card payment system, allows its merchant banks to determine whether they want to block gambling transactions. Director of Public Affairs for Visa, Rhone Bentz, said the system enables a bank to determine whether a gambling transaction is conducted on the Internet or a licensed casino in Las Vegas or Atlantic City.¹²

Gambling Industry Heats Up in Britain

The United Kingdom's Department for Culture, Media and Sport (DCMS) published the first draft clauses of a Gambling Bill as Culture Secretary Tessa Jowell called for regulations that will meet the demands of current gambling technology. The draft clauses of the Bill aim to relax outdated restrictions and provide greater choice for adult gamblers. The Culture Secretary said that the changes recognize that adults who gamble need to be trusted and treated like adults.¹³ The Bill allows for the establishment of a new regulator for the industry, while the Gambling Commission would still license gambling operations and key personnel. Jowell, in an address to the House of Commons, outlined key principals behind the proposed Bill which were: a crime-free gambling industry that can meet the challenges of the technological age, regulation through a new Gambling Commission with wide-ranging powers, an industry offering more choice for players, and greater protection for children and the vulnerable.¹⁴ The draft clauses call for the United Kingdom Secretary of State to be able to regulate that a certain method of

¹⁰ Andrea Ahles, *No Online Gambling with Bank One Cards*, www.Startelgram.com (6.27.03)

¹¹ *Id.*

¹² *Id.*

¹³ Press Release, *Draft UK Gambling Bill*, www.rgtonline.com/root_index.asp (7.16.03)

¹⁴ *Id.*

communication, like the Internet, telephone, television, or radio, may or may not be treated as a form of remote gambling for the purposes of the Bill.¹⁵ The United Kingdom's Gambling bill might be delayed on its way through Parliament, but it is believed any delays will be quite short. In the meantime the gambling industry in Britain is certainly taking a turn for the better, despite, or perhaps in spite of, poor economic conditions. In an interesting development, the industry is no longer dependant on foreign high rollers hitting London. Casinos and bookies in particular seem to be turning over a steady profit, according to Jeffrey Harwood, leisure analyst at E*Trade Financial.¹⁶ With preparations being made for the oncoming deregulation of United Kingdom gambling, there is certainly a money-maker possibility in the midst.

International Gambling Outlook

As the expansion of Internet gambling continues to stretch across the globe, the opportunity is greater than ever for countries to decide whether or not they will support this rapidly growing and lucrative industry. Romania, one of the poorest nations in Europe, entered into the gambling arena with the launch of Danube Casino, the country's first Internet casino.¹⁷ The site, www.danubecasino.com, is the creation of Internet maverick Nicolae Sfetcu, who first started out as a freelancer specializing in web design and now owns Multimedia SRL. Danube Casino, partnered with Windows Casino, which is legally licensed, fully insured, certified by Safe Bet, and approved by the Electronic Gaming Commission.¹⁸ Danube Casino offers over 125 different games according to European and American standards. The gamblers have the

¹⁵*Id.*

¹⁶ Darren, *UK Gambling Industry Heats Up*, www.onlinecasinonews.com/ocnv2_1/article/article.asp?id=3584 (7.2.03)

¹⁷ Rob van der Gaast, *Romania's First Online Casino*, www.igamingnews.com/index.cfm?page=artlisting&tid=4345 (7.1.03)

¹⁸ Press Release Multimedia SRL, *The First Romanian Online Casino*, www.teleactivities.com (6.25.03)

possibility, besides the regular prizes, to obtain extra prizes, consisting of trips, a brand new Ferrari, and other promotional materials. In order to be able to play on the site, a deposit in a casino account has to be made. All transactions are in U.S. dollars, with payments being made either by credit cards or through specialized services for the online processing of money. Bulgaria is also considering changing its legislation to attract investors from European Union countries to its gaming industry. Snezhana Koleva, Finance Ministry Euro-integration Department Officer, said that in 2005 Bulgaria would repeal the requirement for foreign companies entering the country's gambling business to form an association with a Bulgaria-founded firm.¹⁹ Koleva said the gambling law amendments are part of Bulgaria's effort to harmonize its laws with European Union standards and close E.U. negotiations' Chapter Three concerning the free movement of services. Chapter Three of Bulgaria's negotiations with the E.U. requires equal treatment of Bulgarians and foreigners, common licenses for financial services which should be recognized everywhere, and stabilized prices.²⁰ At the moment, foreign investors who want to start a gambling business also have to build or buy a four or five star hotel and invest 10 million Euro, as well as create 500 jobs. Chief Expert in the European Integration Department of the Ministry, Josephina Ivanova, said that the changes in the law would be accepted by the end of 2004.²¹

Not all countries are so eager to jump on the Internet gambling band-wagon due to the uncertainties of the legal climate which surrounds the industry. A Dutch court, in interlocutory proceedings initiated by Foreign Operator De Lotto, has ordered the operators of 21 Internet gambling sites based in other countries to make their Websites inaccessible to residents of the

¹⁹ Business Staff, *Playing for the Big Win*, www.sofiaech.com/art.php?id=7635&catid=23 (6.30.03)

²⁰ *Id.*

²¹ *Id.*

Netherlands.²² The Financial Times reported that a total of 40 companies had been called to court and another 42 companies have said they will take steps to exclude Dutch visitors. The gambling sites will be asked to comply with the judgment by employing software that enables operators to locate the country from which visitors are placing bets.²³ In a surprising move, however, the Greek government has been warned by the European Commission for passing a law to crack down on Internet gambling. A blanket ban was introduced in July 2002 on all electrical, electromechanical and electronic games including computer games, in all public places, including Internet cafes.²⁴ Although Greece later clarified that the law only prohibits gambling-related games, the European Commission was “unsatisfied” with the response and has sent a formal notice requesting more information. The commission said it is concerned that it was not notified about the law while the law was still in its draft stages, which in this case was a requirement.²⁵ The European Commission is also concerned that the law is restricting business activity by causing difficulties for companies that sell and maintain electronic games equipment and programs, particularly in public places.

It seems that the United States was not the only country to catch the anti-Internet gambling bug. Following the move abroad, local banks in Malaysia are scrutinizing credit card payments, especially those involving Internet betting, in a move to curb the growing trend of virtual gambling among Malaysians. Banks which issued Master or Visa credit cards in the past three months have issued warnings to card holders in their statement of accounts, that payments for Internet gambling will not be honored. Three months ago, Malayan Banking Berhad

²² Press Release from Out-Law.com, *Gambling Sites Banned from Accepting Dutch Visitors*, www.rgtonline.com (7.4.03)

²³ Rob van der Gaast, *A Victory for Holland's De Lotto over Foreign Operators*, www.igamingnews.com/index.cfm?page=artlisting&tid=4348 (7.1.03)

²⁴ Drew Cullen, *Greek Games Ban Breaks EC rules*, www.register.co.uk/content/6/31922.html (7.23.03)

²⁵ Munir Kotadia, *Greece Warned Over Gaming 'Mess'*, <http://news.zdnet.co.uk>

(Maybank), which issues MasterCard and Visa credit cards, warned its customers that credit card payments made to Internet gambling sites were illegal.²⁶ A Finance Ministry Official said that banks could be charged with criminal offenses if they made the online gambling payment.²⁷ The announcement makes Malaysia the latest country through Visa and MasterCard to ban Internet gambling payments.

Scams & Shams

Massachusetts State Lottery Officials, in cooperation with the F.B.I., shut down a fraudulent Website that mimicked the official Massachusetts State Lottery site, www.masslottery.com. Scam artists spoofed the Website of the Massachusetts State Lottery Commission in an attempt to steal personal and financial information from lottery players across the country. The fake lottery Website, www.mass-lottery.org, which was hosted by a N.Y.-based company HostRocket.com Inc., has been taken down, because it was nearly identical to the Massachusetts Lottery Commission's official site and even included an image of the state treasurer, according to Lottery Spokeswoman Amy Morris. Members of the operation contacted more than 200 known individuals from all over the world by e-mail and text messaging, informing them they had won a cash prize. Victims were then asked to forward a cash amount as tax and to submit sensitive financial information before winnings could be received. Once consumers clicked on a link contained in the e-mail or text messages, they were taken to an official-looking Website, asked to key in user names and passwords provided to them in the e-mail, and then asked to supply personal information, including a credit card number and a Social Security number, Morris said. Lottery officials first learned of the scam in May, but at the

²⁶ Eddie Chua, *No Credit for Gambling*, www.emedia.com.my/current_news/MM/Monday/Frontpage/20030714112154

²⁷ *Id.*

request of the FBI did not go public with the information because they were trying to track down the responsible individuals. The Massachusetts State Lottery has recently been in contact with all other state lotteries to insure that no other Website like this exists.²⁸

New York police have also broken up a multi-million dollar mob gambling ring based out of Long Island. Eight men allegedly linked to the Bonnano crime family have been arrested in connection with the gambling ring. Authorities believe they were involved in a sports betting ring that raked in nearly \$20 million a year. According to Thomas Spota, Suffolk County D.A., the operation was run out of wire rooms in Manhattan, the Bronx, and off-shore rooms in Costa Rica with bets being accepted via the Internet and also by telephone. Prosecutors say the operation was headed up by 54-year-old Anthony Frascone, and 44-year-old John Spirito of the Bronx. At their arraignment, the alleged ringleaders pleaded not guilty to promoting gambling. But prosecutors say that they hit the jackpot by busting up a major gambling ring run by the mob. Spota displayed thousands of dollars in cash, betting slips, guns, tape recorders, a phone and a good old-fashioned adding machine to tally up the profits. The evidence was seized by detectives who executed 15 search warrants. Prosecutors say more felony charges could come as well. The police say the Bronx wire room was run out of the home of a 93-year-old woman who was paid \$500 for the use of her apartment. According the D.A.'s office, bets, which were placed under coded names, were accepted on hockey, basketball and football games.²⁹

²⁸ Linda Rosencrance, *Cyberscam strikes Massachusetts State Lottery*, www.computerworld.com (7.9.03)

²⁹ Lauren DeFranco, *Police Charge 8 with Running Mob Gambling Ring*, http://acbllocal/wabc/news/wabc_071503_gambling.html (7.15.03)

Say it Ain't So – Government Run Gambling?

Bored with football? If the Pentagon had its way, you would be able to bet on international terror instead. The United States federal government recently received a taste of its own medicine when attempts to set up “government style” gambling backfired in the media. Facing a chorus of disapproval from Capitol Hill, the Pentagon killed a program that would have had investors betting on the likelihood of terrorist attacks and assassinations. The program called the Futures Markets Applied to Prediction (FutureMAP), would have involved investors betting small amounts of money that a particular event, like a terrorist attack, would happen. In a statement, the Pentagon said it would consider what it called the "technical promise" of the plan before asking for additional funds to make it operational. The Pentagon's hesitation over the plan followed the project's disclosure by two Democratic senators, Ron Wyden (D-OR) and Byron Dorgan (D-ND), who expressed outrage as they revealed the planned \$8 million Policy Analysis Market program, www.policyanalysismarket.org.³⁰ Visitors to the site now are met only with a blank page. Registration was set to begin August 1, 2003 with trading to begin October 1, 2003. The Internet site would allow people to place money on predictions and then collect the proceeds of traders who put money into the market but predicted wrong. A graphic on the market's Web page showed hypothetical contracts in which investors could trade on the likelihood that Palestinian leader Yasser Arafat would be assassinated or Jordanian King Abdullah II would be overthrown. Although the Website described the Policy Analysis Market as a Middle East market, the graphic also included the possibility of a North Korea missile attack. That graphic apparently was removed from the Website hours after the news conference in which Wyden and Dorgan criticized the market.

³⁰ VOA News, *Pentagon Reconsiders Internet ‘Terror’ Market*, www.voanews.com (7.29.03)

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