

**Gambling Law Update™**  
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**LEGISLATIVE UPDATE**

Despite federal restrictions in the United States, the Internet gambling industry is continuing its proliferation around the world, with no end in sight. The National Gambling Impact Study Commission concluded in a recent report that Americans alone wager around \$80 to \$380 billion dollars with online bookmakers, which is almost one-hundred times the amount wagered legally on professional sports in Nevada.<sup>1</sup> To combat this, Family News In Focus and many other “pro-family” members of Congress have made passage of the Internet Gambling Prohibition Act, S. 627, a top priority.<sup>2</sup> The sponsor of S. 627, Senator Jon Kyl (R-AZ), has declared that he will do what he can to prompt a vote on the Bill this year. If the Bill is finally passed, it will have federal bank regulators using their enforcement power to force banks to stop payments to Internet casinos, essentially making illegal most, if not all, forms of payment for online gambling. The companion legislation, H.R. 2143, passed the House of Representatives during the first session of the 108<sup>th</sup> Congress, which unlike the Senate Bill, contains a states’ rights provision to regulate or prohibit online wagering within its borders. If the Senate passes S. 627 as well, a joint session would be held to work out the differences between the two Bills.

In spite of these efforts to prohibit gambling, United States politicians have asked the United Kingdom (“UK”) for its views on whether the federal government should prohibit

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<sup>1</sup> Kolemian Strumpf, *Online Gambling Ban Doomed to Fail*, Fox News Channel at [www.fownews.com/story/0,2933,111025,00.html](http://www.fownews.com/story/0,2933,111025,00.html) (02.10.04).

<sup>2</sup> Amanda Izsak, *Pro-Family Successes Likely in Congress*, Family News In Focus at [www.family.org/cforum/fnif/commentary/a0030402.cfm](http://www.family.org/cforum/fnif/commentary/a0030402.cfm) (02/05/04).

Americans from online gambling. Recently, Congressman John Conyers (D-Mich.) from the House of Representatives' Judiciary Committee sent a letter to Chancellor Gordon Brown that asked for his opinion on prohibiting Americans from gambling over the Internet with companies outside of the United States.<sup>3</sup> Emphasizing that the UK does not support such a ban, John Healey, Economic Secretary to the Treasury, in his reply stated, "Online and telephone betting is already well established as a legal activity in this country . . . In going forward we have decided that it is better to regulate and control this activity rather than seek to prohibit it."<sup>4</sup> Some analysts in the industry believe this move may signal a change in attitude towards the legalization and regulation of Internet gambling.<sup>5</sup> Lawmakers in the United States, through their prohibition efforts, may be on the verge of realizing the loss of potential tax revenue to offshore and foreign jurisdictions.

### NATIONAL GAMBLING REGULATION OUTLOOK

The question of whether Internet gambling will be prohibited is, as of now, a gray area in the United States, where companies are shying away from the idea in hopes of staying out of the reach of the Department of Justice ("DOJ"). MasterCard International recently issued a bulletin to its member financial institutions emphasizing the necessity of compliance with all MasterCard standards to prevent the use of its system for illegal activities.<sup>6</sup> MasterCard general counsel Noah Hanft stated, "Transactions that present heightened risks of potentially illegal activity include Internet payments for transactions involving gambling, pornography, and prescription

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<sup>3</sup> Alistair Osborne, *US Approaches Brown on Internet Bets Prohibition*, located at [www.money.telegraph.co.uk/money/main.jhtml?xml=/money/2004/02/09/cnbet09.xml&menuId=242&sheet=money/2004/02/09/ixfrontcity.html](http://www.money.telegraph.co.uk/money/main.jhtml?xml=/money/2004/02/09/cnbet09.xml&menuId=242&sheet=money/2004/02/09/ixfrontcity.html) (02/09/04).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Business Wire, *MasterCard Reinforces Need For Compliance With Rules Prohibiting Use Of MasterCard Systems For Any Illegal Activity*, Business Wire at [http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news\\_view&newsId=20040212005581&newsLang=en](http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20040212005581&newsLang=en) (02/12/04).

medications,” (emphasis added).<sup>7</sup> The bulletin also noted that a member that fails to comply with its standards may be suspended or terminated and required to absorb the cost of any illegal transactions. The key standards outlined by MasterCard in a press release prompts its members to practice due diligence, placing the burden on its members to ensure that the business is not illegal, that the transactions are properly identified, and that they comply with all applicable laws.<sup>8</sup> MasterCard said in its release that it is working closely with law enforcement officials in efforts to combat illegal activity. It acknowledged that it is working with a variety of federal and state agencies including the Drug Enforcement Administration, the United States Secret Service, the DOJ and the Federal Bureau of Investigation.<sup>9</sup>

Visa has also issued new procedural rules to its clients as well. Visa has instituted a new procedure for adding new sites to client portfolios. Effective immediately, IPSP’s are required to submit all new domains requesting credit card processing to Visa for approval. No longer promising the same day set up for new URL’s, Visa expects this new registration process to be fairly expedient and believes that site approvals should only require two business days.<sup>10</sup> By closely monitoring the transactions that are taking place, credit card companies are making an attempt to ensure that businesses that utilize their services are not involved with Internet gambling.

### **GAMBLING AROUND THE STATES**

While the current status of Internet gambling in the United States remains a question for now, some states have taken up the task of attempting to regulate this activity. The Missouri

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Kevin Smith, *MasterCard Tells Merchants To Halt Illegal Activity*, Igamingsnews.com at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=4878> (02/13/04).

<sup>10</sup> Rand at EPOCH, Director of Corporate Communications, Epoch Transactions Services, *New IPSP Rule From Visa Effective Immediately*, EPOCH News (02/13/04).

Gambling Commission sought to cancel Nevada-based slot machine manufacturer, Sierra Design Group's state license because a subsidiary, Arcade Planet, Inc., allegedly offered Internet gambling in violation of state law. According to court documents filed by the Commission, Arcade Planet had more than 500 registered customers from Missouri and was offering illegal gambling to its residents.<sup>11</sup> The dispute arose out of Arcade's pay-to-play games that had been offered at [www.prizegames.com](http://www.prizegames.com), which included solitaire and math-based puzzles.<sup>12</sup> Sierra maintained that the games offered on the site were skill-based, while the commission argued that they were games of chance. Arcade Planet has completely shut down its Website, which was enough to please the Gaming Commission, who is no longer pursuing the cancellation of Sierra's license.<sup>13</sup>

Conversely, other states are looking to prohibit online gambling within their borders. New Jersey legislators have recently taken steps to combat online gambling as well. Senate Bill 2376 would make Internet gambling by anyone in New Jersey illegal, regardless of where the other individual in the transaction is located.<sup>14</sup> The bill would also void credit card debt incurred while gambling online and allow only the state to recover remote gambling losses.<sup>15</sup> However, a bill was also sponsored by Assemblyman Anthony Imperduto, which would allow licensed casinos in Atlantic City to run gambling sites on the Internet.<sup>16</sup> Imperduto, who said the bill was drafted to protect children and help compulsive gamblers, believes the bill could help enable

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<sup>11</sup> Rick Alm, *Internet Gambling Violation Disputed*, KansasCity.com at [www.kansascity.com/mld/kansascity/business/7859115.htm](http://www.kansascity.com/mld/kansascity/business/7859115.htm) (02/03/04).

<sup>12</sup> *Id.*

<sup>13</sup> Liz Benston, *Sierra Design Shuts Down Website*, Casino City Times at [www.casinocitytimes.com/news/article.cfm?contentID=140939](http://www.casinocitytimes.com/news/article.cfm?contentID=140939) (02/20/04).

<sup>14</sup> Kevin Smith, *New Jersey Senate Revisits I-Gaming Policy*, Igamingsnews.com at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=4895> (02/20/04).

<sup>15</sup> *Id.*

<sup>16</sup> Meredith D'Agnolo, *N.J. Legislators Catching Up With High-Tech Criminals*, PressofAtlanticCity.com at [www.pressofatlanticcity.com/news/newjersey/020804CATCHUP.html](http://www.pressofatlanticcity.com/news/newjersey/020804CATCHUP.html) (02/08/04).

the closure of offshore sites if more people decided to use the licensed, regulated sites.<sup>17</sup> Additionally, the bill would tax online gambling, which would fund, among other things, groups that aid compulsive gamblers.

### **GAMBLING IN THE CARIBBEAN**

Until recently, companies have been able to set up gambling operations offshore and take wagers with little or no worry about the federal regulations in the United States. However, the DOJ issued a letter to the United States Virgin Islands' justice department on January 2, 2004, which informed them that operating Internet gambling services in the territory violates federal laws and the Federal Wire Act of 1961. Chair of the United States Virgin Islands Casino Control Commission, Judge Eileen Peterson, received a letter from United States Attorney for the District of the Virgin Islands, David Nissman, which warned that the Criminal Division of the United States Department of Justice in Washington "believes that federal law prohibits all forms of Internet gambling."<sup>18</sup> The letter further stated that the Department of Justice does not agree with the decision in *In re MasterCard*, 313 F.3d 257 (5th Cir. 2002), and that Section 1084 of Title 18, United States Code is not applicable to casino-style wagering. Section 1084(a) deals with the transmission of wagering information and penalties, and 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 in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title

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<sup>17</sup> *Id.*

<sup>18</sup> Bradley Vallerius, *Federal Justice Department Advises US Virgin Islands Not to Host I-Gaming Services*, Igamingsnews.com at [www.igamingnews.com/index.cfm?page=artlisting&tid=4856](http://www.igamingnews.com/index.cfm?page=artlisting&tid=4856) (02/05/04).

or imprisoned not more than two years, or both.”<sup>19</sup> The letter also added that Section 2 of Title 18, United States Code, imposes criminal liability on those individuals or entities that aid, abet, counsel, command, induce or procure the commission of an offense against the United States,<sup>20</sup> which provides insight as to the distance the DOJ may be willing to go in its prosecution of online gambling-related activities. Despite the disapproval from the DOJ, gaming regulators in the Virgin Islands plan to move forward with initiatives for Internet gaming, but whether or not operators are still willing to relocate to the jurisdiction now remains to be seen.

However, as the United States Virgin Islands move towards regulating Internet gambling, the federal government is arguing before the World Trade Organization (“WTO”) in a fierce battle with Antigua and Barbuda, who has challenged the United States’ efforts to prohibit Americans from using credit cards to pay for Internet gambling. Antigua and Barbuda have taken the United States before the WTO, claiming its prohibitions on gambling are discriminatory and violate current trade agreements that require the United States to permit foreign Internet companies to offer their services to Americans.<sup>21</sup> Standing behind Antigua and Barbuda in support of this action are the European Union, Canada and Japan.<sup>22</sup> The island nation complained to the WTO that the United States’ prohibition has had a negative effect on the country and is seriously damaging its economy. A WTO ruling is expected soon to decide whether Internet services must be treated the same way as their traditional land-based counterparts,<sup>23</sup> will clarify whether a company from a foreign jurisdiction offering Internet services will enjoy the same trade privileges as its traditional land-based counterpart.

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<sup>19</sup> 18 U.S.C. § 1084 accessed at <http://www.fbi.gov/hq/cid/orgcrime/statutes/1084.htm> (02/25/04).

<sup>20</sup> Letter from David Nissman, United States Attorney District of the Virgin Islands, to Judge Eileen Peterson, Chair of the Casino Control Commission, (01/02/04).

<sup>21</sup> Out-Law.com, *Gambling On-Line: US Breaking International Law?*, Out-Law.com at [www.out-law.com/php/page.php?page\\_id=gamblingonlineus1075721021&area=news](http://www.out-law.com/php/page.php?page_id=gamblingonlineus1075721021&area=news) (02/02/04).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

## INTERNATIONAL GAMBLING UPDATE

British policy makers at the Department for Culture, Media and Sport published new clauses of the draft “Gambling Bill” for the UK. Although none of the new measures pertain directly to Internet gambling, the provisions include powers to freeze suspicious bets pending an investigation and to void unfair bets. Also included are provisions regarding gambling machines and licenses allowed for pubs and clubs. The draft bill seeks to balance protection for children and vulnerable adults with the needs of the gambling industry, particularly in light of the growth of the Internet.<sup>24</sup> The bill is currently under consideration by a Parliamentary Joint Scrutiny Committee, who is due to report back to Parliament on the draft no later than April 8, 2004. Then the government will consider the Committee’s report and place the draft bill before Parliament.<sup>25</sup>

Also heading for a change is MGM Mirage, who has once again set its sights on the UK. MGM, who currently owns and operates 12 casino resorts in Nevada, Mississippi, Michigan and Australia, announced that it will build a hotel-casino next to one of the largest retail centers in the UK. The completion of the project hinders upon gambling laws potentially being changed, ending rules that limit slot machine payoffs and restrict casino gambling to members who follow a dress code, and building permits being issued.<sup>26</sup> Industry observers say the UK could pass new gambling legislation by late 2004 or early 2005.<sup>27</sup> Las Vegas-based MGM Mirage would operate the casinos.

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<sup>24</sup> Out-Law.com, *Final Clauses of Draft Gambling Bill Published*, Out-Law.com at [www.out-law.com/page.php?page\\_id=finalclausesofdra1076067340&area=news](http://www.out-law.com/page.php?page_id=finalclausesofdra1076067340&area=news) (02/06/04); a copy of the proposed bill can be viewed at <http://www.culture.gov.uk/NR/rdonlyres/ekiz3j7nkibhrgwkznu7ciqidr6sfutxetaws1jw2pcmfc5ywuubssbyyiccnjie5cspoomdvzdyajeyipp3kpwqg/clauses70billdraft020204.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> Las Vegas Sun, *LV Resort Operator in UK Deal*, Las Vegas Sun at [www.lasvegassun.com/sunbin/stories/gaming/2004/feb/03/516288122.html](http://www.lasvegassun.com/sunbin/stories/gaming/2004/feb/03/516288122.html) (02/03/04).

<sup>27</sup> Associated Press, *MGM Mirage Plans to Build Casino in UK*, AP at [http://abcnews.go.com/wire/business/ap20040203\\_1959.html](http://abcnews.go.com/wire/business/ap20040203_1959.html) (02/03/04).

Likewise, United States casino giant Harrah's is also set to launch its first gambling site in the UK. However, this site is targeting 35 to 48 year-old women as its main demographic. The games will be skill based, rather than casino-style games, with users paying a monthly subscription fee for unlimited access to the site. Its new site will go by the name LuckyMe, with advertising planned on Yahoo!, MSN, and offline in women's magazines and shopping centers.<sup>28</sup>

Canada may not be far behind the UK when it comes to proposing regulations surrounding Internet gambling. As a result of regulatory changes made by the Canadian Pari-Mutuel Agency last year that allow Internet wagers on horse racing, Woodbine Entertainment Group became the first to offer legal Internet gambling in Canada when it launched [www.HPIBET.com](http://www.HPIBET.com), a Website that allows wagering on horse races. Now the question being asked is whether government-run Internet casinos are next for Canada? "The entire gambling and gaming industry in Canada is government run or quasi-government run," said David Canton, a technology lawyer.<sup>29</sup> According to Canton, the next logical step would be government-run web casinos.<sup>30</sup> Currently, given the uncertain legal status of Internet gambling in the United States, and the fact that regulatory issues that would govern Internet gambling in Canada like tax collection and law enforcement are not yet in place, it is unlikely that the Canadian government will approve widespread Internet gambling in the near future.

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<sup>28</sup> Paul, *Harrah's To Launch Women's Gambling Site From UK*, Online Casino News at [www.onlinecasinonews.com/ocnv2\\_1/article/article.asp?id=4799](http://www.onlinecasinonews.com/ocnv2_1/article/article.asp?id=4799).

<sup>29</sup> Anthony Corban, *More Internet Gambling Sites To Come?*, Standardbred Canada at [www.harnesslink.com/www/Article.cgi?ID=8785](http://www.harnesslink.com/www/Article.cgi?ID=8785) (01/21/04).

<sup>30</sup> *Id.*