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BLUFFING? THE LEGISLATIVE RESPONSE TO INTERNET GAMBLING

Jon Feldon*

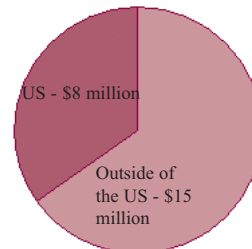
The Law

On September 30th, Congress passed the Unlawful Internet Gambling Enforcement Act (“UIGEA”) to address the difficulties enforcement agencies face in delineating which actions by internet gambling sites constitute criminal activity, and which are allowable as symptoms of an unregulated industry.¹ The new act, awaiting presidential approval, applies to all bets and wagers “unlawful under any applicable federal or state law.”² Furthermore, the Act bans the use of banks, credit cards, and online money transfers to pass money between bettors and “unlawful” gambling sites.³ If President Bush signs UIGEA into law, the Act will make the use of credit cards, checks, or any electronic fund transfers illegal as means to settle gambling debts.⁴ Congress did not go so far as to require internet search engines like Google to independently scan the web to identify and block gaming sites like they must with child pornography sites. UIGEA does, however, allow federal prosecutors and state attorneys general to force search engine companies to remove links to internet gambling pages on a case-by-case basis.⁵ Representative Robert Goodlatte of Virginia proposed a bill to expand the Wire Act,⁶ currently used to prosecute internet gambling, to explicitly apply to the internet.⁷ Congress shied away from Goodlatte’s proposed approach, regarded by many as the most direct and efficient strategy, leaving UIGEA open to criticism that the act is an empty gesture by comparison.⁸

The Problem

Congress’s failure to clearly identify the meaning of the term “unlawful” in the wording of the Act represents the most glaring difficulty in UIGEA’s approach to resolving the legal gray zone surrounding internet gambling in the United States.⁹ The issues surrounding the legality of different types of online betting are an example of how the phrase “unlawful under any applicable federal or state law” renders UIGEA ineffective. Horse-race betting sites such as Youbet.com have argued that other federal laws make their form of online gambling legal, and UIGEA does nothing to resolve the dispute because the Act is only applicable in situations where such a conflict has already been resolved and the disputed practice falls under the category of “unlawful under any applicable federal or state law.”¹⁰ A federal appeal in 2002 legalized casino-type online gambling while barring internet sports betting,¹¹ but American authorities have been largely indifferent to the distinction. U.S. law enforcement has arrested foreign businessmen running sports betting gambling sites, such as David Carruthers of Betonsports.com, but also seized money without hesitation from online casino gambling businesses such as Partygaming.com in 2004 and Vulcan Sports Media, Inc. through settlement in 2006.¹² Whereas legislators like Goodlatte would prefer to modify the existing law currently used to prosecute illicit internet gambling companies,¹³ and to make relevant statutes directly applicable to the problem,

UIGEA in its present form arguably creates more ambiguity, and will most likely create more legal questions than it resolves. Online gambling companies will still have difficulty identifying the legality of some of their practices, and law enforcement will still shoulder the burden of establishing the unlawfulness of any given practice.



Internet Gambling Use

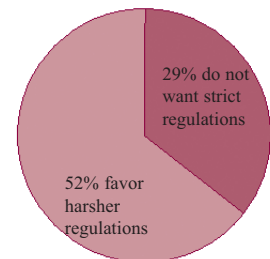
In 2005, nearly 23 million people gambled on the internet. 8 million, or 35% of those people, were from the United States.^a

Online Bets Placed

In 2005, \$12 billion dollars worth of bets were placed online worldwide. The United States alone wagered \$6 billion.^b

Public Opinion

52% of Americans favor increasing regulations for internet gambling while only 29% believe that there is no need for harsher regulations.^c



The Industry

Despite its ambiguity, UIGEA has already had a profound effect on the \$13 billion online gaming industry.¹⁴ The passage of the bill through Congress caused stock prices for internet gambling companies primarily targeting the United States to plummet,¹⁵ including Party Gaming PLC, 888 Holdings PLC, and Sportingbet PLC.¹⁶ The dramatic effect of American legislation is due to the fact that U.S. market accounts for more than half of the patronage of internet gaming sites.¹⁷ Some companies have reacted by shifting their focus from the U.S. to Asia, while others are attempting to skirt legal issues by adjusting their names and procedures, or diversifying their service offerings.¹⁸ Party Gaming PLC, the world’s largest online gambling company, and 888 Holdings PLC have both announced that if President Bush approves UIGEA, they will cease operations in the United States, a move that will immediately cut off the source of 76% of Party Gaming’s profits and 50% of 888 Holding’s.¹⁹

Most industry representatives are unhappy with UIGEA, feeling that the U.S. is unfairly shutting foreign com-

panies out of the American market.²⁰ Nigel Payne of World Gaming PLC called the act “absurd protectionism” after the online gaming crackdown resulted in the arrest of Sportingbet.com chairman Peter Dicks and killed Sportingbet.com’s interest in acquiring World Gaming.²¹ I. Nelson Rose, an expert on internet gambling from Whittier Law School, describes the Act as a well-timed political maneuver rather than a fully conceived attempt to address online gambling issues.²² A number of foreign online gaming companies share Rose’s sentiments and are content to wait and see what effect the law will have, if any, in nine months when the UIGEA committee presents its ideas for what regulations the act will contain.²³ Similarly, companies that serve as intermediaries, such as Neteller.com and Firepay.com, may or may not be affected significantly, depending on how the Treasury Department constructs its regulations to accompany the act.²⁴

Some experts say that UIGEA will result in a temporary halt in internet gambling, followed by a rush of new companies, designed to fill the legal ambiguities created by UIGEA.²⁵ Other experts say that privately held companies will be virtually unaffected, and UIGEA will serve only to shut out the large, prominent companies, with U.S. online gamblers continuing to play without a pause.²⁶

Is the UIGEA a congressional bluff? Maybe.

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¹ See David Wessel, *Law is Unlikely to Corral Internet Gambling*, Wall Street Journal, October 5, 2006, at A2; see also H. Res. 907, H.R. 4777: Internet Gambling Prohibition Act.

² *Id.*

³ See *id.* (detailing the different internet transactions to be covered by UIGEA).

⁴ See Jessica Hodgson, *Gambling Companies Move To Diversify Outside U.S.*, Wall Street Journal, October 3, 2006, available online, last visited October 30, 2006 (indicating that settling gambling debts over the internet will become illegal under UIGEA).

⁵ See Wessel *supra* note 1 (adding that prosecutors will have a limited power to compel search engines to act as filters, through the use of court orders).

⁶ See 18 U.S.C.A. § 1084, Transmission of Wagering Information (criminalizing the transmission of bets or wagers, information or authorization concerning bets or wagers through interstate or foreign commerce by means of a “wire transmission facility”).

⁷ See Wessel *supra* note 5 (crediting Representative Goodlatte, R-VA, for his attempts to have UIGEA amend the Wire Act).

⁸ See *id.* (relating Congress’s refusal to adopt Goodlatte’s bill containing an amendment to the Wire Act to explicitly cover internet gambling).

⁹ See *id.* (supporting the assertion that the wording of UIGEA’s main clause severely weakens its effectiveness).

¹⁰ See *id.* (addressing the controversy surrounding the legality

of different forms of online gambling).

¹¹ See *id.* (mentioning that a federal appeal resulted in a largely ignored legal differentiation between different types of internet gaming).

¹² See *Will Google Pull Online Gambling Links?*, October 9, 2006, available at <http://www.bettingmarket.com/ggg-gooole109876.htm>, last visited 10/16/2006 (ascribing a failure to acknowledge the legality of some internet gambling forms to U.S. legal enforcement agencies).

¹³ See generally Wesley Scott Ashton, *Criminalizing Internet Gambling: Should the Government Keep Bluffing or Fold*, preceding article, 2 CRIM. L. BRIEF 4 (explaining the various U.S. laws under which prosecutors currently attack internet gambling, including the Wire Act, the Travel Act, the Illegal Gambling Business Act, state money laundering statutes, and racketeer-influenced and corrupt organization statutes).

¹⁴ See Hodgson *supra* note 4 (acknowledging the far-reaching, international effects of the U.S.’s legislation against internet gambling).

¹⁵ *Id.*

¹⁶ See Christina Binkley and Jessica E. Vascellaro, *Despite Crackdown, Online Gamblers Aren’t Ready to Fold*, Wall Street Journal, October 3, 2006, at A17 (confirming the international effect of U.S. legislation on online gambling businesses).

¹⁷ See *id.* (providing support for the contention that U.S. legislation is highly influential, due to the sizable U.S. gambling market).

¹⁸ See Hodgson *supra* note 4 (listing the different ways in which internet gambling companies intend to react to the passage of UIGEA).

¹⁹ See Binkley *supra* note 15 (predicting the potential loss of revenue for the two largest internet gambling companies should UIGEA remove the U.S. market).

²⁰ See Hodgson *supra* note 3 (highlighting the industry reaction to UIGEA).

²¹ See *id.* (quoting an industry leader and noting the events that helped lead to the formulation of his opinion).

²² See *Online Gambling Moves Are More Politics Than Poker*, available at <http://www.online-casinos.com/news/news3055.asp>, last visited 10/16/2006 (discussing I. Nelson Rose’s position).

²³ See *id.* (relating the strategy of those companies taking I. Nelson Rose’s position that the UIGEA is composed of more political bluster than substance).

²⁴ See Binkley *supra* note 15 (illustrating how additional contributions by the Treasury Department will play a significant role in the ultimate effect of UIGEA).

²⁵ See *id.* (predicting through experts how UIGEA will affect internet gambling in the U.S.).

²⁶ *Id.*

Endnotes for Charts and Graphs

^a American Gaming Association, <http://www.americangaming.org> (last visited October 21, 2006).

^b *Busted Flush*, THE ECONOMIST, Oct. 5, 2006, <http://www.economist.com/business/displaystory.cfm?storyid=7997055>.

^c *A Virtual Roll of the Dice*, available at <http://www.rasmussen-reports.com/2006/September%20Dailies/InternetGambling.htm>