

Internet Gambling

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Introduction To The Gambling Industry

The gambling industry is one of the most lucrative forms of entertainment in America today. Revenues from gambling in 1998 were greater than those earned from recorded music, theme parks, video games, spectator sports, and movie tickets combined.¹ There appears to be no end in sight to the popularity of gambling in America, as gaming revenues have grown every year for the past twenty years at a ten percent rate, with 1999 revenues totaling \$58.2 billion.² This revenue growth has coincided with the relaxation of state laws forbidding gambling. As early as 1985, casinos were legal only in Nevada and Atlantic City, New Jersey, but today at least twenty-eight states have legalized casino gambling.³

¹ Jason Cother, *Gambling Industry*, available at <http://www.hoovers.com/industry/snapshot/profile/0,3519,21,00.html> (n.d).

² American Gaming Association, *AGA Fact Sheets*, at http://www.americangaming.org/casino_entertainment/aga_facts/facts.cfm/id/7 (Feb. 24, 2001) (revenue figures are based on what is called Gross Gambling Revenue, which is the amount wagered minus the winnings returned to the players. The actual amount annually wagered by American gamblers is in excess of \$600 billion.).

³ National Coalition Against Gambling, *Facts About Gambling*, at http://www.ncalg.org/pages/fact_about_gambling.htm (n.d.).

Additionally, forty states have a state lottery.⁴ In all, every state except Hawaii and Utah now has some form of legalized gambling.⁵

While the traditional forms of gambling, brick-and-mortar casinos and state-run lotteries, continue to comprise the largest share of industry revenues, a new medium for gambling has emerged with the advent of the Internet: the on-line casino. People with access to a computer are now able to log on at literally anytime and enter the world of the virtual casino. This burgeoning sector of the gambling industry is expected to bring in over three billion dollars in revenue by the year 2002.⁶ There are currently more than 250 casinos, 139 sports books, 20 bingo games, and 64 lotteries operating on the Internet.⁷ However, the future of these casinos is in doubt as the federal government contemplates whether or not to legalize and regulate them or to ban their operation altogether.

This note will mention the policies both for and against gambling generally, and focus on the policies specific to Internet gambling. It will then examine the state and federal laws that pertain to this field and how the public policies have affected the laws in the past and how they should affect them in the

⁴ Jason Cother, *Gambling Industry*, available at <http://www.hoovers.com/industry/snapshot/profile/0,3519,21,00.html> (n.d.).

⁵ U.S. Commission Report, *The National Gambling Impact Study Commission's Final Report* (June 18, 1999), available at <http://www.gamblingproblem.net/ngiscfr.htm> (Feb. 24, 2001) (the various forms of gambling included are lotteries, casinos, riverboat casinos, Indian casinos, video lottery machines, and pari-mutuel betting (horse racing, dog racing, and jai-alai)).

⁶ Michael Hammond, *Internet Gambling Regulation* (April 17, 2000), at <http://www.geocities.com/mehamm0/netgambling.htm> (n.d.).

⁷ American Gaming Association, *AGA Fact Sheets*, at http://www.americangaming.org/casino_entertainment/aga_facts/facts.cfm/id/17 (n.d.).

future. Next, it will discuss the jurisdictional issues associated with the implementation of Internet gambling laws, which is of primary importance in regards to the enforcement of anti-gambling legislation. Finally, some suggestions will be made about the future of Internet gambling regulation, both for and against its legalization.

Opening An Account

Setting up an on-line gambling account requires only a few simple steps. The user simply has to log on to an Internet casino, enter his name and mailing address, and provide funds for his account. This is done either by submitting a credit card number so that play can begin immediately, or by sending a certified check or money order. Once the money is received by the website operator, the player is allowed to begin gambling in the virtual casino and/or sports book. Losses are simply deducted from one's account, while any money won can either be added to the player's account, or be sent to the player via check from the operator. This ease of access has its positives and negatives, which will be discussed in further detail later in this note.⁸

Pros And Cons Of Gambling Prohibition

The propriety of gambling has been a heavily debated topic in America for quite some time. There are a number of

⁸ See *infra* p. 6-7.

societal ills caused by gambling, but at the same time, communities can benefit greatly from having a casino or lottery in their area.

The first objection to gambling is that the introduction of gambling to a community inevitably leads to an increase in the number of gambling addicts in the area. For example, after riverboat casinos were introduced in Iowa, the percentage of adults in that state addicted to gambling increased from 1.7 percent to 5.4 percent.⁹ Currently, there are “approximately 2.5 million pathological gamblers, 3 million problem gamblers, and another 15 million people at risk to become problem or pathological gamblers” in the United States.¹⁰

With the increase in the number of addicts comes a concomitant increase in crime. In a study conducted by U.S. News and World Report, it was discovered that crime rates in casino communities were 84% higher than the national average.¹¹ These crimes are the result of two things: 1) problem and pathological gamblers having to “feed” their addiction, forcing them to steal or embezzle to support their habit; and 2) losing gamblers taking out their frustrations on the public and on loved ones. A study by the Attorney General of Maryland found that gambling leads to increases in violent crime, crimes against property, insurance fraud, white-collar crime, juvenile crime, drug and alcohol-related crime and domestic violence

⁹ National Coalition Against Legal Gambling, *The Case Against Legalized Gambling*, at <http://www.ncalg.org/pages/case.htm> (n.d.).

¹⁰ National Coalition Against Legalized Gambling, *Facts About Gambling*, at http://www.ncalg.org/pages/fact_about_gambling.htm (n.d.).

¹¹ *Id.* (In addition, “while crime rates nationally dropped by 2% in 1994, the 31 localities that introduced casinos in 1993 saw an increase in crime of 7.7% the following year.”)

and child abuse.¹² This study shows that the effects of problem gambling are sweeping, creating problems in both the public and private sphere of these problem gamblers.

Finally, critics assert that gambling, primarily state lotteries, target the poor who are more susceptible to the notion of getting rich quick that these high reward games of chance offer. The poor see a lottery ticket or a slot machine as their way out of their dire financial situation, and the gaming operators exploit this fact by specifically advertising to this demographic group. As a result, “the poorest citizens spend the largest percentage of their incomes on gambling.”¹³

Although there are many problems associated with gambling, there are also valid arguments supporting the legalization and regulation of the gambling industry. The first of these arguments is that gambling is simply a form of entertainment, and American consumers are free to spend their entertainment dollar on a product from which they derive the most utility. Our free-market economic system has shown that American consumers find casinos to offer a valid and worthwhile product, and these consumers should not be prohibited from participating in a clearly desired activity. The market is often the best indicator of consumer choice, and the choice in favor of legalizing gambling has been made overwhelmingly apparent from the construction of two \$700 million hotel/casinos and one \$1 billion dollar hotel/casino in America in the last year.¹⁴ The capital necessary to fund these

¹² National Coalition Against Legalized Gambling, *The Case Against Legalized Gambling*, at <http://www.ncalg.org/pages/case.htm> (n.d.).

¹³ *Id.*

¹⁴ Jason Cother, *Gambling Industry*, available at <http://www.hoovers.com/industry/snapshot/profile/0,3519,21,00.html> (n.d.) (Paris

massive construction projects would not be available if consumers did not demand the product that they offer. Proponents contend that the government has no right to assert their legislative morality into the marketplace in the face of such strong consumer testimony to the contrary.

The second argument made by supporters of the legalization of gambling is that the presence of casinos and lotteries generates substantial revenues and job opportunities that are of great benefit to local communities. A study by the American Gaming Association found that, "for every \$1 million in revenue generated by the casino industry, 13 jobs are created, and the average casino industry wage is \$26,000."¹⁵ Not only do these new jobs benefit those who actually receive the jobs, but local non-gambling related businesses also receive a boost as overall disposable income in the community increases.

The major benefit to the communities, however, is the increased tax revenues received from gaming operations. Casinos generate millions of dollars of revenue each year that are used to subsidize government programs that benefit the community as a whole.¹⁶ For example, in the first five years that riverboat casinos operated in Illinois, a total of \$955 million were generated in state and local tax revenues.¹⁷ Not only is

Las Vegas and Biloxi, Mississippi's Beau Rivage opened in 1999 at a cost of \$700 million each, and the \$1 billion Borgata Casino broke ground last year in Atlantic City, New Jersey.).

¹⁵ American Gaming Association, *Myths & Facts*, at http://www.americangaming.org/casino_entertainment/myths_facts/sub_myths.html (n.d.) (In addition, more than 40,000 jobs are created each year as a result of casino industry capital spending.).

¹⁶ American Gaming Association, *Myths & Facts*, at http://www.americangaming.org/casino_entertainment/myths_facts/sub_myth_01_rev.htm (n.d.)

¹⁷ *Id.*

there is a substantial increase in tax revenues, there is also evidence that government spending for public-assistance programs decreases, thereby increasing the net fiscal benefits to the government even more.¹⁸ Due to the number of jobs created, people who were previously on welfare no longer have to rely upon this public source of income to subsist.¹⁹

Internet Gambling Policy

While these same arguments are relevant to the discussion of on-line gambling, there are some additional concerns and benefits that are created because of the unique characteristics of the Internet. The first problem that many critics point out with Internet gambling is the potential for children to access gaming sites and set up an account of their own, either under false pretenses or through the use of a parent's credit card. Because of the difficulty webmasters have of verifying a user's age, children can easily slip in under the radar and begin playing illegally. Furthering this problem is the fact that gambling is now the "fastest-growing teenage addiction, with the rate of pathological gambling among high school and college-age youth about twice that of adults."²⁰ This propensity for gaming by minors is a major concern of lawmakers who feel that the legalization of Internet gambling would only create

¹⁸ *Id.*

¹⁹ In Tunica, Mississippi, for example, there has been a 29 percent decrease in the number of local residents receiving welfare payments since legalized gambling was introduced in 1992.

²⁰ National Coalition Against Legalized Gambling, *The Case Against Legalized Gambling*, at <http://www.ncalg.org/pages/case.htm> (n.d.).

more gambling addicts because of the ease with which a minor can participate in the virtual gaming experience.

Another significant issue in regards to on-line gaming sites is the legitimacy of the website operator, both in terms of fairness of the game and the payment of winnings to customers. The integrity of the game is easily manipulated on the Internet, as software can be designed to make the odds of winning disproportionately unfair to the unsuspecting consumer. An article by Adam Snyder highlights the importance of maintaining the integrity of these internet casino games, saying, "The issue of trust is paramount in on-line gambling-both for the player, who cannot see a dealer or croupier handling the cards or chips, and for the casino or sports book that stands to lose all if its reputation is tarnished."²¹

Not only must players worry about the deck being stacked against them from the outset, they have to consider the possibility that they will never receive their winnings from the website proprietor. Because of the uncertainty surrounding the legality of Internet gaming sites, disreputable site operators have been known to refuse payment because there are no uniform legal consequences associated with such a practice.²² Another article by Adam Snyder tells the story of an Internet gambler, Bruno Paniccia, who accumulated \$5,000 in winnings on a website operating from the Caribbean.²³ When Mr. Paniccia demanded payment of his winnings, the company refused to pay him, claiming an FBI raid had resulted in the freezing of its

²¹ Adam Snyder, *Odd alliance tackles Net Gambling*, available at <http://www.msnbc.com/news/130443.asp> (n.d.).

²² Adam Snyder, *Wagering on Web is risky business*, available at <http://www.msnbc.com/news/130414.asp> (Feb. 24, 2001).

²³ *Id.*

accounts.²⁴ Mr. Paniccia was thus swindled out of his \$500 initial investment and the \$5000 that he had subsequently won. Although most companies do pay their customers what they have earned, there are still some (mostly foreign-based) that decline demands for payment. This is a risk of which potential Internet gamblers must be aware and one that legislators will definitely take into account when ultimately deciding the issue of the regulation of Internet casinos.

There are, however, some positive aspects to allowing gambling on the Internet. First, the Internet provides computer users the opportunity to gamble from the comforts of their home. No longer does one have to go on vacation to partake in casino activities. Just as consumers now use the Internet to purchase goods and services in almost every industry, gamblers can now take advantage of this new technology to fulfill their entertainment desires. Not only can users avoid the costs associated with visiting a brick-and-mortar casino, they also are not subject to the numerous other traps that the on-site casino experience entails. They don't have to worry about the glitz and glamour of the Las Vegas Strip or the Atlantic City Boardwalk, which draw people in and induce them to spend money they otherwise would not spend. Instead, the Internet gambler can log on as he chooses and is able to gamble in a more rational state of mind, free from the many distractions present in the traditional casino environment.

²⁴ *Id.*

Laws Relevant To Internet Gambling

The regulation of gambling has generally been an issue left to the individual legislatures of the states via the Reserve Clause of the United States constitution.²⁵ There is a wide range of regulations amongst the states, with some completely opposing any form of gambling (Utah and Hawaii)²⁶, while others rely upon it as a critical state industry. In fact, “Nevada openly declares in their statutory law that gambling is ‘vitaly important to the economy of the state and the general welfare of the inhabitants.’”²⁷ While states still have substantial say in the regulation of the gambling activities within their border, they have had to give way in certain instances to Congressional regulation.

Using the power given them through the interstate commerce clause of the Constitution, Congress has promulgated a handful of laws over the years that regulate the gambling industry. Those laws that are potentially relevant to Internet gambling are the Wire Act²⁸, the Travel Act²⁹, and the Professional and Amateur Sports Protection Act.³⁰ The Wire Act is of primary relevance, although it does not cover the complete range of Internet gambling. It provides that,

Whoever being engaged in the business of betting
or wagering knowingly uses a wire

²⁵ U.S. Const. amend. X

²⁶ See *supra* p. 2.

²⁷ Michael Hammond, *Internet Gambling Regulation* (April 17, 2000), at <http://www.geocities.com/mehamm0/netgambling.htm> (n.d.).

²⁸ 18 U.S.C. § 1084 (1994)

²⁹ 18 U.S.C. § 1952 (1990)

³⁰ 28 U.S.C. § 3702 (1992)

communication facility for the transmission in interstate or foreign commerce of bets or wagers or information in 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 or imprisoned not more than two years, or both.³¹

This statute seems to cover Internet gambling because the use of the Internet requires transmission of information over a wire (telephone line or cable). So, accepting bets on a web site that are sent across state lines is a violation of the Act.

However, there are some limitations explicitly stated in the statute. First, it applies only to those “engaged in the business of betting or wagering” and thus does not provide any penalty or deterrent for the individual gambler. The web site operator would be the only guilty party under this law. Second, the Wire Act prohibits only betting on sports. No mention is made of the prohibition of casino-type gambling, presumably because the law was enacted prior to the development of technology that enabled consumers to play casino games over the wires. As a result, this statute implicates only a narrow segment of the Internet gambling industry. Lastly, the law is applicable only to wire transmissions. This express statutory language excludes the newer technologies that permit wireless transmission of information. Again, the age of the statute is the

³¹ 18 U.S.C. § 1084(a) (1994)

cause of this omission, but it is a potentially major impediment to the effective enforcement of the Wire Act in this context. Nonetheless, section 1084 has been relied upon to prosecute operators of Internet gambling sites in some recent cases.³²

The second major act covering Internet gambling is the Travel Act.³³ This statute provides in part that,

...whoever... uses the mail or foreign commerce, with intent to (1) distribute the records of any unlawful activity... or (3) otherwise promote, manage, establish, carry on or facilitate the promotion, management, establishment or carry on, of any unlawful activity... shall be fined under this title or imprisoned not more than 5 years, or both.³⁴

Included in this statute is a prohibition against “any business enterprise involving gambling.”³⁵ The Travel Act seems to cover Internet gambling in that a telephone line or web server could be construed as a “facility” falling within the statute. Unlike the Wire Act, this act seems to apply to both website operators and their consumers, as it contains no express clause that makes the prohibition exclusive to the operator. Thus, this act seems to be more sweeping and capable of covering a greater number of Internet gambling cases in the future.

³² *People v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 714 N.Y.S.2d 844 (1999); *U.S. v. Ross*, 1999 U.S. Dist. LEXIS 22351;

³³ 18 U.S.C. § 1952 (1994)

³⁴ *Id.*

³⁵ 18 U.S.C. § 1952(b) (1994)

The final statute pertaining to Internet gambling is The Professional and Amateur Sports Protection Act.³⁶ This law makes it illegal for any person to “sponsor, operate, advertise or promote. . . , a betting, gambling, or wagering scheme based, directly or indirectly . . . , on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”³⁷ This law clearly applies only to sports betting and not to virtual casino operations. However, it does stand as a prohibition against placing bets on sports through use of the Internet. Sports betting that was permitted in Nevada, Oregon, and Delaware prior to the enactment of this statute is explicitly excluded from the reach of the statute.³⁸

These three statutes are the major prohibitions against Internet gambling currently in existence. Though they were all enacted prior to the introduction of the Internet as a medium for transacting bets, they are each relevant to a certain extent. However, they all have a similar shortcoming in that they involve primarily supply-side regulation. Only the website operators are subject to these regulations (except to a limited extent under the Travel Act³⁹), to the exclusion of the individual bettors. This provides both parties with an incentive to engage in Internet gaming, notwithstanding the laws enjoining the activity. The web site operator who does a simple cost/benefit analysis may determine that it is in his best financial interest to provide this illegal service, at the risk of being sanctioned, to a certain point where his expected return outweighs the potential

³⁶ 28 U.S.C. § 3702 (1992)

³⁷ *Id.*

³⁸ Hammond, at <http://www.geocities.com/mehamm0/netgambling.htm> (n.d.).

³⁹ See *Supra* p. 9.

sanction.⁴⁰ The individual user, on the other hand, has absolutely no legal disincentive to take part in Internet gambling. As long as there is a website providing gambling services, the consumer can participate without fear of punishment. This combination of dishonest operators and untouchable (by the law) consumers makes the current regulatory scheme greatly ineffective in the Internet gambling sector.

Jurisdiction In Internet Gambling Cases

The biggest obstacle that legislators face in regards to regulating Internet gambling (as in other internet-based businesses) is obtaining personal jurisdiction over statutory offenders. Because the Internet is essentially omnipresent, it would seem that the development of a new jurisdictional approach is necessary to properly and fairly ensure justice in this

⁴⁰ Presumably, he would continue operating his website until the cost of the penalty imposed exceeds the financial benefit of the continued operation of said site. At least in theory, this point would be reached upon one committing his second offense, where the punishment would obviously be greater than for a first offense.

area.⁴¹ This problem is best summarized by the court in *Minnesota v. Granite Resorts Inc.*⁴², where they state,

. . . [t]he 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 the jurisdictions in which receiving computers are located to regulate for the general welfare.⁴³

However, the cases that have been decided have generally not had trouble with the jurisdictional component.

There are two major related jurisdictional problems in the area of the Internet: 1) Is jurisdiction based upon where the bet is received or where it is placed; and 2) Are off-shore casinos subject to jurisdiction in American courts? As to the first question, it is clear that if both parties to the transaction reside in states that both allow gambling, then the solicitation and

⁴¹ Indeed, the court in *N.Y. v. Lipsitz* 174 Misc.2d 571 at 578, 663 N.Y.2d 468 at 473 (1997), addressed this very issue in its opinion, stating, “. . . although internet transactions might appear to pose novel jurisdictional issues, traditional jurisdictional standards have proved to be sufficient to resolve all civil internet jurisdictional issues raised to date, refuting the view of ‘some commentators. . . who believe a new body of jurisprudence is needed to address questions of personal jurisdiction and the Internet.’” (citing Zembek, *Jurisdiction and the Internet: Fundamental Fairness in the Networked World of Cyberspace*, 6 Alb. LJ Sci & Tech 339, 346(1996).)

⁴² *Minnesota v. Granite Gate Resorts, Inc.* 568 N.W.2d 715 (1997).

⁴³ *Id.* at 718.

placing of the bet is permissible.⁴⁴ The jurisdictional determination becomes relevant, however, when the bettor, who is from a state that allows gambling, accesses a web-based casino operated from a state in which gambling is illegal, and vice versa. Essentially, a type of conflict of laws problem arises, in which the laws of the respective states are at odds with one another. The question then becomes where is jurisdiction proper.

Subjecting one to personal jurisdiction for acts committed over the Internet is not as troubling an issue as it seems in theory. In the cases that have dealt with the problem up to this point, the traditional standards from *International Shoe Co. v. Washington*⁴⁵ have applied.⁴⁶ In a case involving an injured citizen of one state suing an Internet casino operator from another, a potential jurisdictional dilemma is raised. The aforementioned *Minnesota v. Granite Gate Resorts, Inc.* case dealt with this very issue.⁴⁷ Rogers, a Nevada resident, operated a website on which he advertised an internet gambling site based in Belize which he owned and which was to be opening in the near future. A consumer investigator for the Minnesota Attorney General saw the advertisement and responded to the solicitation to sign up for a website mailing list. Minnesota sued Rogers and his company for deceptive trade practices, based on the representations on the website that gambling on the Internet is legal in Minnesota. Rogers responded by moving to dismiss

⁴⁴ 18 U.S.C. § 1084 (1994) contains an exception for transmission between states where wagering is legal in *both*(emphasis included) states.

⁴⁵ *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

⁴⁶ Michael P. Kailus., Note, *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 U. ILL. L.REV. 1045 at 1063 (1999).

⁴⁷ *Minnesota v. Granite Gate Resorts, Inc.* 568 N.W.2d 715 (1997).

for lack of personal jurisdiction. The defendants alleged that to subject them to personal jurisdiction in Minnesota “would not comport with the traditional notions of fair play and substantial justice,”⁴⁸ as required by *International Shoe*. The court, however, used the traditional minimum contacts test to shoot down this argument by the defendants.⁴⁹ They determined that Rogers and his Belize-based company were subject to personal jurisdiction because “the defendant consciously decided to transmit advertising information to all Internet users, knowing that such information will be transmitted globally.”⁵⁰ They went on to say that “[a] defendant cannot ‘hide behind the structuring of its distribution system when the defendant’s intent was to enter the market [in the forum state] and profit thereby.’”⁵¹ Therefore, one cannot expect to not be held answerable for their unlawful actions through use of the internet as their medium of transacting business.

This liberal jurisdictional approach has also been followed in other jurisdictions. World Interactive Gaming Corporation (WIGC) was a Delaware corporation that wholly owned an Antiguan subsidiary operating a global Internet casino.⁵² Although it was incorporated in Delaware, WIGC had its corporate headquarters in New York, from which it made administrative and executive decisions and solicited investors via

⁴⁸ *Id.* at 718.

⁴⁹ *Id.*

⁵⁰ *Id.* at 719. (citing *Maritz, Inc. v. Cybergold, Inc.*, 947 F.Supp. 1328, 1333 (E.D. Mo. 1996).

⁵¹ *Id.* at 720 (citing *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 722 (Minn. 1985)).

⁵² *People v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 714 N.Y.S.2d 844, 847 (1999).

company telephones.⁵³ The court found that the fact that the company operated out of New York was enough to establish the requisite minimum contacts with New York to subject the defendants to personal jurisdiction in that state.⁵⁴ They also said that notwithstanding the fact that their corporate headquarters were in New York, the company still would have been subject to personal jurisdiction there because, among other things, they advertised their services on their website, without excluding residents of the state of New York.⁵⁵ The court proceeded to comprehensively discuss the policy behind their finding, stating,

[W]ide range implications would arise if this Court adopted respondents' argument that activities or transactions which may be targeted at New York residents are beyond the state's jurisdiction. Not only would such an approach severely undermine this state's deep-rooted policy against unauthorized gambling, it also would immunize from liability anyone who engages in any activity over the internet which is otherwise illegal in this state. A computer server cannot be permitted to function as a shield against liability. .⁵⁶

These previous two cases appear to provide a conclusive answer that any company that advertises on the Internet will be subject to personal jurisdiction in every state where people can access

⁵³ *Id.* at 846-847.

⁵⁴ *Id.* at 849.

⁵⁵ *Id.*

⁵⁶ *Id.* at 850.

the company's website and conduct business. This view has not been followed in all cases, however. The court in the *New York v. Lipsitz* case stated that jurisdiction cannot be based on the mere fact that a company operates a website that is accessible by residents of a particular state.⁵⁷ In a key phrase of the opinion, the court said that,

...a finding of personal jurisdiction in New York based on an Internet web site would mean that there would be nationwide (indeed, worldwide) personal jurisdiction over anyone and everyone who establishes an Internet web site. Such nationwide jurisdiction is not consistent with traditional personal jurisdiction case law nor acceptable to the Court as a matter of policy.⁵⁸

Thus, these cases seem to lead to a general principle that web site operators will be subject to personal jurisdiction based on the traditional methods used in all civil cases. The mere operation of a web site is probably not sufficient, but where the operator targets and has reason to expect that his site will be used by consumers in particular states, he will be subject to jurisdiction in such states.

⁵⁷ *N.Y. v. Lipsitz*, 174 Misc.2d 571, 663 N.Y.S.2d 468 (1997).

⁵⁸ *Id.* at 473 (citing *Hearst Corp. v. Goldberger*, 1997 WL 97097, 1 (S.D.N.Y. Feb. 26, 1997)).

What Should Be The Future Of Internet Gambling?

As has been stated, the emergence of Internet gambling as a desired source of entertainment in America has led to a number of questions regarding its legitimacy and legality. But, what can be done about Internet gambling in the future, given its acceptance by the American consumer?

The first option is to succumb to all of the negatives that Internet gambling poses and enforce an outright federal ban, applicable to every state. The reasons behind banning Internet gambling entirely are two-fold: 1) Reduce the incidence of gambling addiction (and accompanying increase in crime rates) in America; and 2) Limit the access that minors have to such sites.

By completely banning Internet gambling, fewer people will presumably be given the opportunity to gamble, and thus fewer will become addicted. If Internet gambling were permitted, it is safe to assume that the number of addicts would increase, consistent with the statistics that show increases in states in which formerly illegal gambling is subsequently allowed.⁵⁹ With potentially millions more people having the opportunity to gamble, at any time of day, from the comfort of their own homes, there is bound to be a fairly substantial increase in the number of problem and pathological gamblers. The problems commonly caused by gambling addicts are sure to follow, with a more widespread effect than is typical.

Not only will the number of addicts increase, the number of minors using these services will also increase. While there will certainly be safeguards put in place to protect against

⁵⁹ See *supra* p. 3.

this, it is inevitable that a significant percentage of Internet gamblers will be underage. Again, the statistics relating to gambling generally are sure to play out in the Internet gambling context as well.⁶⁰ As more minors gain access to these websites, the greater the likelihood that they, too, will become addicted. The introduction of Internet gambling as a legislatively accepted form of entertainment is likely to lead to the social ills that have plagued gambling throughout its history in the United States. Are these social problems worth the potential benefits to be gained through its legalization?

The primary arguments behind the legalization and regulation of the gambling industry are that: 1) Gambling has always been, and should remain, a state issue; 2) The states will lose out on substantial tax revenues; and 3) Prohibition will only create a black market that will lead to greater problems.

The first problem with a federal ban on Internet gambling is based on federalism concerns. Seeing as how gambling has always been an issue decided by the states⁶¹, it is necessary that the states retain their power to determine the costs and benefits emanating from gambling within their own borders. The American Gaming Association supports this view, saying "Federal Internet legislation should follow the model of the Wire Act and permit states to make decisions about the use of technology within their borders by licensed gaming companies."⁶² The state interest in making these important policy decisions is greater than the federal government's interest

⁶⁰ See *supra* p. 6-7.

⁶¹ See *supra* p. 1.

⁶² American Gaming Association, *AGA Fact Sheets*, at http://www.americangaming.org/casino_entertainment/aga_facts/facts.cfm/id/17 (n.d.).

in legislating morality. Internet gambling is an area of the law in which the federal government should defer to the individual states.

The second reason to legalize Internet gambling is to provide the states and the federal government with substantial tax revenues. By making the activity illegal, hundreds of millions of dollars will be lost each year, and this money will remain in the hands of those website operators who are able to evade the reach of the law. If Internet gambling were legalized, this money could be used, as it has been in states permitting other forms of gambling, to improve schools, roads, and the communities in general.⁶³

Along these same lines is the problem of the inevitable emergence of a black market for Internet gambling. As with any desired, but illegal product, unscrupulous entrepreneurs will create a market for the product under the nose of the law. Due to the ease of starting a website, a new illegal Internet casino could presumably open everyday. The costs to the federal government of policing this practice would be too substantial as compared to the benefit received in outlawing the activity. At the same time, the government loses out on the potential tax dollars that could be received from the legalization of these sites.⁶⁴

To conclude, changes in the area of the law concerning Internet gambling are necessary. The current statutory schemes relied upon by the courts are outdated and are of only limited utility. Lawmakers will ultimately have to make a decision about the regulation of Internet gambling, which will involve a

⁶³ See *supra* p. 6.

⁶⁴ See *supra* p. 19.

policy determination about what the government deems is more important between two general interests: the interest in protecting the community from the social harms that result from permitting gambling and the economic benefits received from gambling. This is a difficult decision, with a number of collateral issues. The critical question that must be decided, however, is whose decision is it to make- the federal government or the individual state governments? Once this determination is made, the law in the area of Internet gambling will become very clear. But, as long as the federal government and state governments are at odds over who is in control, the law will remain in a state of flux.