

Ancillary Enforcement of Online Gambling Laws

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Introduction

- Most online gaming is operated from outside the borders and jurisdiction of the U.S.
- U.S. customers desire this form of entertainment, and bet from inside the country.
- Advertising is directed to and/or received by U.S. players from the Web and traditional media.
- Typical criminal statutes are difficult to enforce on an extraterritorial basis.
- Law enforcement officials now seek novel approaches to enforce gambling laws against those who facilitate online gambling in some way.

U.S. Legal Environment

- “All online gambling is illegal.”
- Multiple federal statutes cited as basis.
- Department of Justice disagrees with *In re Mastercard Int’l* case.
- Advertising online gambling = “aiding & abetting” illegal gambling.
- No federal law specifically prohibits online gambling advertising.
- “Marketing” entities are included in conspiracy indictments.
- No convictions have resulted from pure advertising.

Constitutional Principles

- No 'right to gamble' in the Constitution.
- Gambling Advertising is protected speech under the First Amendment.
- Legality of advertisement focuses on the place where the advertised activity occurs, not where the advertisement is received. *Greater New Orleans Broadcasting Assn.*
- U.S. citizens must conform their activity to the requirements of U.S. law, no matter where the activity occurs.
- U.S. law can be enforced against foreigners in limited circumstances, consistent with due process.

Extraterritorial Jurisdiction

- Foreign citizens subject to U.S. prosecution if “minimum contacts” exist.
- Foreign jurisdiction limited by due process notions of fundamental fairness.
- Assertion of personal jurisdiction must be “reasonable.”
- Decisions made on a ‘case by case’ basis.
- Intent to cause effects in U.S. analyzed.
- Legislative intent also considered.

In Personam Actions v. Gaming Interests

- *U.S. v. Carruthers*; RICO case; UK citizen; jurisdiction based on presence in the forum (Texas). [case pending]
- *U.S. v. Kaplan*; RICO case; U.S. citizen; jurisdiction based on extradition from Dominican Republic to Puerto Rico. [case pending]
- *Louisiana v. Peter Dicks*; state online gambling case; jurisdiction based on presence in the country; extradition failed. [dismissed]
- *U.S. v. NeTeller*; Money Laundering & Wire Act case; jurisdiction based on presence in the forum. [guilty plea]
- *U.S. v. eGold*; Money Laundering; unlicensed banking; U.S. citizen/foreign corp; jurisdiction based on presence in the forum. [guilty plea]
- *U.S. v. Cohen*; Wire Act case; U.S. citizen/foreign corp; jurisdiction based on surrender to the court. [conviction]

Which Laws Apply Outside US?

- Wire Act – yes;
- Travel act – yes;
- Paraphernalia Act – yes;
- Illegal Gambling Business Act – arguably, no;
- Racketeering – yes;
- Aiding & Abetting – depends;
- Conspiracy; 18 *U.S.C.* § 371 – depends.

Extradition

- Governed by international treaties (E.g.; the "Mutual Legal Assistance Treaty;" US/CA).
- Generally requires "dual criminality."
- Often impacted by political considerations.
- History of extradition from Canada in vice cases.
 - Marijuana seeds/growing websites.
 - Internet obscenity.

Canadian /US Treaties

- 1976 Treaty: Extradition permitted if conduct is punishable by 1+ years in jail.
- 1985 Mutual Legal Assistance Treaty:
 - Activity must be subject to Indictment in Canada, and a felony in the U.S.
 - Canada can deny extradition if deemed contrary to its public interest.
 - Notwithstanding, both countries agree to share information regarding the proceeds of criminal activity, to assist in forfeiture.

Piercing Offshore Entities

- Foreign entities occasionally owned by U.S. shareholders.
- “Shell” corporations will be disregarded by the courts.
- Online gambling entities are often more than shell companies, due to tax considerations.
- Practical difficulties exist in serving foreign directors with legal process.
- Shareholders may have given up control over assets to foreign trustees/directors.

Collateral Prosecutions

- Advertising Outlets
- Software Developers/Consultants
- Financial Transaction Providers
- Affiliated Entities/Individuals
- Monetary Assets
- Domain Names

Advertising Outlets

-Monetary Settlements

- Google, Yahoo, MSN: \$31.5 M
- St. Louis Radio Stations: \$158,000
- Paradise Poker/Discovery Network: \$3.2M
- The Sporting News: \$7.2 Million
- Basis? Aiding & Abetting illegal gambling.
- No criminal charges or convictions.
- But: BetonSports.com case; included Florida marketing company in Indictment.

Impact of UIGEA on Advertising

- No specific references to advertising.
- No change in substantive gambling law.
- Payments for gambling advertising are not prohibited by the legislation.
 - Query: Revenue Share Agreements??
- “Portals” or other advertising websites may be impacted by website blocking provisions.
- “Dot Net”/Play-for-Free advertising remain unaffected by UIGEA.

Problems with Aiding & Abetting Theory

- Occurs when one substantially assists another in the commission of a crime.
- DOJ's "Theory of Choice."
- Requires the completion, or attempted completion, of a separate, independent criminal act.
- Legal operation of offshore, licensed gambling entity complicates liability theory.
- Does any underlying criminal act occur?
- What about Freedom of Speech?

Software Developers / Consultants

- *New York v. Fuchs, et al* (N.Y. Sup. Ct. 2006).
- All defendants charged in 'conspiracy:'
 - Primary Development (web designer)
 - Prolexic Technologies (telephone services)
 - Digital Solutions (internet connection)
 - D.S. Networks, S.A. (internet security)
 - Louis A. Moed (Accounting/Consulting)
 - Pled guilty; awaiting sentencing

Financial Transaction Providers

- eGold: Charged with unlicensed banking – pled guilty.
- NeTeller: Charged with money laundering – pled guilty.
- Paypal.com: Withdrew from gambling industry – paid \$200,000 fine to NY.
- ePassporte, Firepay – withdrew in 2006.
- Credit Card Companies – withdrew in 1999.

Affiliated Entities / Individuals

--All pursued for gambling violations

- Agents
- Runners
- "Landlords"
- Management Companies
- Attorneys
 - David Tedder, Esq. (Gold Medal Sports)
 - Bruce Meagher, Esq. (Gold Medal Sports)
- Spouses
- Shareholders
 - David Howard (Gold Medal)
 - Randy Moreau (Gold Medal)

Monetary Assets

- Foreign governments are more willing to cooperate on monetary issues than extradition requests.
- 'Correspondent Accounts' necessary to conduct international wire transfers, but can be frozen to encourage cooperation.
- Foreign banks starting to give up information on customers in response to allegations of U.S. income tax evasion.
- Licensing jurisdictions wrestle with the tension between supporting economic development through Internet gaming and cooperation with U.S. authorities.

Domain Names

- *1st Technology v. BoDog:*
 - Default judgment for \$48M on patent claims.
 - Judge allows forfeiture of bodog.com domain name to satisfy judgment – U.S. registrars ordered to comply.
 - Bodog forced to launch “newbodog.com.”
- *Kentucky v. 141 Domain Names:*
 - In Rem action against domain names.
 - Ex Parte seizure order rendered and emailed to Registrars (domestic & foreign).
 - Trial court finds jurisdiction and sets forfeiture hearing.

Kentucky Case, continued

- Parties file a Writ of Prohibition to Appeals Court, alleging lack of jurisdiction and constitutional violations.
- Appeals court finds no jurisdiction since 'gambling device' statute does not apply.
- Kentucky seeks KY Supreme Court review.
- KY lawyers on a 25% contingency fee!
- Attempted to ransom back domain names for millions per URL.

Conclusions

- Gov't will continue to invent new approaches to curtail online gambling.
- Industry will learn from each move and become more creative.
- Most vulnerable element is the flow of money.
- Global economy forces Internet gaming companies to rely on international relationships through banking, hosting, and billing industries.
- Economic crisis may spur consideration of legalization options in U.S. and Canada.