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***11 INTERNET GAMBLING POLICY: PROHIBITION VERSUS REGULATION**

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I. Introduction

Gambling is increasing in popularity in the United States. In 1998, Americans lost \$50 billion in legal wagering. [\[FN1\]](#) The explosive expansion of legalized gambling that has swept through the nation over the past twenty- five years seems likely to continue. [\[FN2\]](#) Indeed, gambling has now spread to the Internet. Research estimates that there are as many as one thousand sites on the Internet where one can wager in one form or another. [\[FN3\]](#) Industry analysts estimate that 14.5 million people gambled via the Internet in 1998, producing revenues between \$651 million and \$919.1 million. [\[FN4\]](#) Analysts also project that revenues from Internet gambling could reach as high as \$10 billion in the next few years. [\[FN5\]](#)

Traditionally, the states have regulated gambling within their borders. [\[FN6\]](#) Internet gambling, however, provides a challenge to this regulatory system because many online casinos are located overseas and arguably out of the jurisdictional reach of state governments. Recent proposals before Congress, therefore, seek to address the issue of Internet gambling at the federal level. The Internet Gambling Protection Act of 1999 ("IGPA") criminalizes Internet gambling. [*12](#) [\[FN7\]](#) The bill provides for fines and prison terms of up to four years for those who operate gambling businesses over the Internet. [\[FN8\]](#) Notably, the authors of the IGPA dropped a provision that would have extended criminal liability to individual customers of online gaming establishments. [\[FN9\]](#) In addition, the IGPA seemingly does not apply to Internet Service Providers ("ISPs") that are mere passive conduits for Internet gambling traffic. [\[FN10\]](#)

[*13](#) The authors of the IGPA apparently envision a complete ban on Internet gambling. Those who favor a complete prohibition on Internet gambling cite several concerns in support of their position: (1) protecting minors from the dangers of underage gambling; (2) preventing fraud; and (3) preventing gambling addiction. [\[FN11\]](#) In addition, state governments want to preserve the tax revenue derived from legalized forms of gambling. [\[FN12\]](#) As this Article will discuss, however, the IGPA likely will fail to eradicate Internet gambling and therefore will do nothing to further these policy goals. Rather than prohibiting Internet gambling, private sector regulation or government regulation may be a more effective means to achieve the stated policy goals.

This Article first discusses the perceived dangers of online gambling. Next, the Article reviews current proposals aimed at prohibiting Internet gambling. Concluding that these proposals will not eliminate Internet gambling, the Article will illustrate how the proposed prohibitions will fail to remedy the ills associated with Internet gambling. The Article then will analyze whether regulatory schemes can assist in reducing the problems associated with online

gambling.

II. Perceived Dangers of Internet Gambling

Those who seek to eliminate Internet gambling often cite four evils that they wish to prevent by prohibiting Internet gambling. Namely, proponents of prohibition wish to prevent minors from gambling on the Internet, eliminate the potential for fraud by unscrupulous Internet casino operators, prevent an increase in gambling addictions, and preserve tax revenues generated by state sanctioned gambling operations.

A. Access to Online Gambling by Minors

Proponents of prohibition argue that, due to the anonymous nature of the Internet, minors will be able to gamble online because *14 Internet operators are not able to verify the age of their users effectively. [FN13] This same argument was raised unsuccessfully in connection with the Communications Decency Act. [FN14] The thrust of the argument is that because Internet gaming establishments allow users to deposit funds by credit card, personal check, bank wire transfer or Western Union, [FN15] minors will be able to steal their parents' credit cards and incur substantial gambling debts that will plunge the family into bankruptcy. First, these fears are not realistic. If a child steals a credit card from his parent, the parent is responsible only for the first \$50 of his or her child's unauthorized use. [FN16] Second, when a minor enters into a contract for non-necessities, the contract is voidable. [FN17] An Internet casino, therefore, likely would be unable to enforce a gambling debt against a minor or his parents in any event. Moreover, serious implications arise when one proposes to reduce the sophistication level of available Internet activities to levels appropriate for children. [FN18]

B. Potential for Fraud

The Senate Committee Report on the IGPA pointed out that Internet gaming establishments do not have the same consumer protection mechanisms in place as their land-based counterparts. [FN19] After receiving a deposit from a player, an Internet casino could abscond with the funds or refuse to pay a player the winnings. [FN20] Since the design of online casinos allows unscrupulous operators to close down their businesses and disappear practically instantaneously, *15 players could find it difficult to retrieve their money. [FN21] In addition, gamblers cannot be certain that online casinos operate their games fairly. Absent the kind of regulation that is imposed on land-based casinos in the United States, abuses by online casinos could become commonplace. The potential for fraud in the realm of online gambling is a valid concern.

C. Gambling Addiction

The Senate Committee Report on the IGPA also raised the fear that the continuous availability of online casinos on one's home computer, as well as the addictive nature of video gambling games, often could lead to increases in pathological gambling. [FN22] In addition, the detached nature of Internet gambling may contribute to problems of addiction. Between electronic funds deposits and video wagering, an online gambler would never come into physical contact with the funds being gambled. Such a system could lead some to gamble beyond their means. In light of the addictive nature of video gaming and the twenty-four hour a day availability of online casinos, the potential for increases in gambling addictions is a valid concern.

D. Tax Preservation

Though proponents of prohibition may not publicly admit it, some may legitimately fear that online gambling will lead to reductions in state tax revenues. States that have legalized gambling collect significant taxes from these gambling operations. For example, Nevada's gambling and hospitality industry generates in excess of \$2 billion annually in state, local and federal taxes, and the New Jersey gambling industry paid \$303.2 million in revenue taxes in 1996. [FN23] Internet casinos, however, allow gamblers to patronize gambling establishments that are not

licensed by any state. States, therefore, will obtain no tax revenues from online casinos that are either unlicensed or licensed by other jurisdictions. To the extent that gamblers reduce their patronage of state-licensed gambling establishments in favor of wagering via online casinos, the states could see a significant decline in tax revenues.

* * *

The foregoing issues seem to be the main policy concerns behind the IGPA. Additionally, United States Representative Bob *16 Goodlatte, a sponsor of the House version of the IGPA, suggested an additional factor in support of prohibition. Representative Goodlatte believes that the government should prohibit Internet gambling because online casinos infringe upon the right of voters to determine whether gambling will be sanctioned in their communities. [FN24] In order to address successfully the objectives of its authors, then, the IGPA or similar legislation must reduce or eliminate the above-mentioned concerns. As the next section will illustrate, prohibition of Internet gambling will not fulfill these objectives.

III. Prohibition

A. Internet Gambling Prohibition Act of 1999

The IGPA subjects operators of online gambling establishments to criminal liability. [FN25] The IGPA also applies to ISPs who actively host gambling sites. [FN26] The House version of the IGPA, however, exempts fantasy sports leagues. [FN27]

As a starting point, the IGPA seems at odds with the Clinton administration's policy statement regarding electronic commerce on the Internet. The policy statement, titled A Framework for Global Electronic Commerce ("Global Framework"), acknowledges the importance that government action or inaction can play in the development of electronic trade. [FN28] The statement sets forth five major principles that the government should follow when determining how and when to regulate electronic commerce: (1) "The private sector should lead;" (2) "Governments should avoid undue restrictions on electronic commerce;" (3) "Where governmental involvement is needed, its aim should be to support and enforce predictable, minimalist, consistent, and simple legal environment *17 for commerce;" (4) "Governments should recognize the unique qualities of the Internet;" and (5) "Electronic Commerce over the Internet should be facilitated on a global basis." [FN29]

The IGPA prohibition of Internet gambling, or any government prohibition for that matter, does not comport with the Global Framework. First, the Global Framework favors industry self-regulation over government regulation. [FN30] As discussed in more detail below, the Internet gaming industry has set forth proposals for self-regulation that may help combat the ills associated with online gambling more effectively than the IGPA. [FN31] The Global Framework also posits that "governments should refrain from imposing new and unnecessary regulations" on the Internet. [FN32] The IGPA is an unnecessary regulation in light of the fact that it cannot effectively combat the ills associated with Internet gambling, as discussed below. Third, the IGPA is inconsistent with the minimalist approach favored by the Global Framework where regulation is necessary. [FN33] A complete prohibition of Internet gambling is hardly a minimalist regulation. The Global Framework also suggests that "regulation should be imposed only as a necessary means to achieve an important goal on which there is a broad consensus." [FN34] Even if the policy reasons underlying support for a complete prohibition on Internet gambling can be considered important goals, because the IGPA will fail to achieve these goals, the legislation is not a necessary means to achieve them. [FN35] Finally, the Global Framework asserts that "the legal framework supporting commercial transactions on the Internet should be governed by consistent principles across state, national and international borders." [FN36] Because several foreign governments permit and regulate Internet gambling, the IGPA will lead to inconsistent international principles regarding online gambling. [FN37] In sum, the IGPA is not consistent with the Global Framework.

B. Prohibition and Technological Limitations

Though the IGPA seeks to eradicate the availability of online gambling in the United States, the bill, or any similar

prohibition, is *18 unlikely to do so. Owners of online casinos can move their operations outside the United States in order to avoid domestic laws while remaining accessible via the Web to any U.S. resident with Internet access. In fact, many Internet casinos already are headquartered offshore. [FN38] Offshore operators who believe that U.S. prosecutors will be unable to obtain jurisdiction over them will continue to operate. Commentators have pointed out that the U.S. government will have great difficulty haling offshore casino operators before U.S. courts. [FN39] Indeed, much of the scholarship on this issue concludes that regulating Internet gambling is not possible due to jurisdictional issues. [FN40] At least one commentator, however, submits that the government is able to exert jurisdiction over many Internet casino operators because most offshore Internet casinos are run by U.S. citizens who have substantial contacts with the United States. [FN41] The United States government, therefore, could prosecute U.S. citizens who run offshore gambling businesses in violation of U.S. laws. [FN42] Non-U.S. citizens who operate offshore Internet casinos and who do not reside in the U.S., however, would have little to fear from U.S. laws. Since the U.S. government will be unable to shut down these foreign-owned and operated sites with threats of criminal prosecution, and because U.S. citizens can access these sites with ease, the IGPA will fail to eradicate Internet gambling in the United States. At best, then, a law such as the IGPA would only succeed in discouraging U.S. citizens from operating domestic or offshore Internet casinos. In fact, to the extent that domestic laws frighten U.S. operators away from the online gaming market, the law actually may encourage foreign operators to enter the market because they will benefit from the decrease in competition.

*19 C. Policy Analysis

Having determined that the IGPA is unlikely to eliminate online gambling, this Article now analyzes whether the IGPA will have any effect on the ills associated with Internet gambling and relied upon by proponents of prohibition.

1. Access by Minors

Attempts by the U.S. government to prohibit Internet gambling surely will fail. Although domestic regulations may discourage U.S. operators from opening online casinos based in the United States or even abroad, U.S. prohibitions will have no effect on offshore Internet casino enterprises that are owned and operated by foreigners. U.S. citizens, including minors, will be able to access these sites via the Internet. To the extent that minors are able to deposit funds with foreign Internet casinos, the IGPA or similar prohibitions will not eradicate underage gambling on the Internet. In fact, these regulations may have the opposite effect.

Domestic laws that prohibit Internet gambling may discourage respected U.S. casino operators from entering the online casino market. These respected operators, if permitted to open gaming sites on the Internet, would have an incentive to implement security measures to assure that minors do not access their sites. Namely, these respected companies would be unwilling to jeopardize their land-based operating licenses by allowing underage gambling on their Internet sites. In the absence of respected U.S. casino operators or otherwise appropriately licensed and regulated casinos from the online gaming market, unlicensed, unregulated online operators will see the opportunity for greater profits in the face of diminished competition from established operators. This may encourage unknown or "fly-by-night" operators, who will be less likely to take action to reduce underage gambling on their Web sites, to enter the market. U.S. prohibitions on Internet gambling, therefore, are unlikely to eliminate or even reduce underage gambling and may, in fact, exacerbate the problem.

2. Potential for Fraud

As previously discussed, domestic prohibitions on online gambling likely will discourage licensed and regulated U.S. casino operators from opening Internet casinos. These respected companies would have a greater incentive to ensure that their online gambling operations are fair and free from fraud for, once again, the operators *20 would fear losing their land-based privileges if they are discovered to have defrauded their customers. Discouraging U.S. operators from entering the online gambling market by passing legislation such as the IGPA will guarantee that U.S. residents can wager only with foreign operators who may have little incentive to insure that their games are fair.

In addition, discouraging U.S. operators from entering the Internet gambling market will make it more difficult for U.S. gamblers who believe that they have been defrauded to recover their losses. While a U.S. resident would have little difficulty bringing an action against a U.S. operator with assets in the United States, his chances of success would be greatly reduced in a similar action against a foreign operator. In short, by attempting to prohibit U.S. operators from running Internet casinos, the IGPA may encourage unscrupulous foreign operators to enter the online gaming market, thereby increasing the potential for fraud.

3. Gambling Addiction

Prohibiting U.S. operators from opening online casinos will do little to eliminate the problem of gambling addiction. As previously discussed, a domestic ban on online gambling will not prevent U.S. residents from gambling on Internet casinos run by foreign operators. Those who gamble on foreign-operated online casinos are just as likely to become problem gamblers. It is possible, however, that some U.S. residents will not gamble on offshore sites run by foreign operators for fear that they may be defrauded. If this is the case, some U.S. residents may decide not to gamble in the first place, thereby reducing the potential for addiction. Several foreign jurisdictions, however, already regulate or are planning to regulate Internet gambling sites housed in their countries. [\[FN43\]](#) To the extent that American citizens trust these foreign governments to regulate effectively, U.S. residents may not fear gambling on sites run by foreign-regulated operators. As was the case in the foregoing analysis of underage gambling and fraud, domestic prohibitions on Internet gambling may discourage respected U.S. operators, who may have greater incentives to enact measures that would combat problem gambling, from entering the market. In sum, it appears that a domestic prohibition of Internet gambling would do little, if anything, to combat the problem of gambling addiction.

*21 4. Taxes

The states derive significant tax revenues from legalized sources of gambling. Americans who gamble online may reduce the amount they wager on legalized forms of state-regulated gambling such as legalized casinos, lotteries and pari-mutuel wagering. [\[FN44\]](#) Any decrease in legalized wagering will result in a corresponding decrease in tax revenues. In theory, by prohibiting Internet gambling, the government could insure that U.S. citizens continue to patronize legal gaming establishments, thus sustaining tax revenues. But prohibition is unlikely to achieve this goal. A domestic prohibition on online gambling will not prevent Americans from placing wagers from their home computers with foreign Internet casinos that are unaffected by U.S. laws. Despite domestic prohibitions, U.S. gamblers will retain the opportunity to wager funds on Internet casinos--funds that they might otherwise spend on state-regulated gaming. Furthermore, by prohibiting, as opposed to legalizing and licensing online casinos, the federal and state governments will pass up the opportunity to collect taxes on wagers placed by Internet gamblers, and likely will fail to develop the necessary tracking mechanisms to assure that U.S. citizens appropriately report gambling income for taxation purposes. Prohibition is unlikely to protect tax revenues.

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The IGPA or other measures that attempt to eradicate online gambling likely will fail. Since these proposals will not totally eliminate Internet gambling, they will do nothing to cure the ills that their proponents seek to address. In addition, these provisions will not solve Representative Goodlatte's concerns regarding the availability of online gambling in jurisdictions where voters have determined that casino gambling is not welcome. [\[FN45\]](#) The prohibitions will not prevent residents of these jurisdictions from gambling via their home computers. Rather, the proposed legislation will insure that Americans can only gamble on Internet casinos run by foreign operators who have little incentive to combat underage gambling, fraud and gambling addictions, who may not be regulated sufficiently by the jurisdictions in which they reside, and who do not pay taxes in the United States.

*22 IV. Regulation

A. Industry Self-Regulation

Regulation is a viable alternative to prohibiting Internet gambling. Industry self-regulation may be most preferable in light of the Clinton Administration's position, as set forth in the Global Framework, that the private sector should lead in establishing any regulations involving electronic commerce. [\[FN46\]](#) Proposals for industry self-regulation already exist. For example, the Interactive Gaming Council ("IGC") seeks to "establish fair and responsible trade guidelines and practices that enhance consumer confidence in interactive gaming products and services" and has established a code of conduct. [\[FN47\]](#) All IGC members must abide by these standards. The code of conduct provides that: (1) members must "abide by the law and regulations of the jurisdiction where they propose to do business" and provide evidence that they are licensed by the jurisdictions in which they operate, if such licenses are available; (2) members must make their systems and algorithms available for inspection by authorities; (3) members will protect the privacy of their customers; (4) members will insure that any advertised information about their operations is accurate; (5) members will retain transaction records for use in dispute resolution procedures; (6) members shall institute reasonable measures to insure that minors cannot access their gaming systems; (7) "members will implement adequate procedures to identify and curtail compulsive gambling;" (8) members will follow generally accepted standards of international banking; (9) members will make certain that sufficient financial resources are available to pay all obligations including the prompt payment of all gambling winnings; and (10) members must adhere to other standards of corporate citizenship. [\[FN48\]](#) In addition, the IGC is developing a seal of compliance for display by member casinos. The seal will "assist the public in recognizing interactive gambling operators who meet the IGC standards for fair and responsible practices" [\[FN49\]](#) The IGC's policies may provide a consistent mechanism for regulating Internet gambling. Because international governments likely will differ on the specifics of regulation, private sector regulations, such as those set forth by the IGC, *23 may provide a level of consistency necessary for the effective regulation of Internet gambling.

Just like prohibition, regulation makes sense only if it can successfully address the ills associated with Internet gambling. Though not a panacea, regulation does appear to hold several advantages over prohibition.

1. Protection of Minors

An effective regulatory regime may help to prevent minors from accessing the sites of regulated casinos. A regulatory body such as the IGC can require its members to adopt measures to reduce the possibility that minors will access their Web sites. For example, regulated online casinos can require their users to provide multiple forms of identification before they are permitted to place wagers. A regulatory body also can require that its members use age verification systems such as "Adult Check." [\[FN50\]](#) Furthermore, regulatory organizations can require member casinos to make blocking software such as "SurfWatch" available to their customers. [\[FN51\]](#) Such software allows parents to prevent their children from accessing inappropriate material, including online gaming sites. In sum, a regulatory body can insist that its members take efforts to ensure that minors are less likely to gain access to member sites.

As in the case of total prohibition, industry self-regulation will not eliminate completely underage gambling on the Internet. Some sites, especially those run by unscrupulous operators, probably would not join voluntary regulatory bodies or abide by their guidelines. Some operators may, in fact, attempt to cater to underage gamblers who are unable to wager on regulated sites that have developed access restrictions. Because adult gamblers will prefer to patronize regulated sites where fraudulent practices are less likely, however, unregulated sites may have to rely almost exclusively on underage gamblers. Because minors may encounter great difficulties when attempting to deposit funds with these sites, unregulated casinos may find that there are an insufficient number of underage gamblers to stay in business. In conclusion, while regulation will not eliminate the problem of underage gambling, it may have a greater beneficial impact than unsuccessful attempts at total prohibition.

*24 2. Fraud

A regulatory agency, such as the IGC, could institute measures to help reduce fraudulent practices among online casinos. For example, the agency could require member casinos to be bonded and to maintain sufficient levels of capital to pay off customers' deposits and winnings on demand. In addition, regulators could establish dispute resolution mechanisms whereby gamblers may seek redress for grievances. Furthermore, regulators could require

member casinos to undergo regular audits to help verify that their games are fair. Again, these procedures will not prevent unscrupulous and unregulated operators from entering the online gaming market, but gamblers likely would choose to patronize only those online casinos that provide fraud protection. Market forces, therefore, would make it difficult for these unregulated casinos to survive in the face of competition from their regulated counterparts. Even if unregulated casinos are able to remain in business, a regulatory system would at least provide Internet gamblers the option to patronize casinos that adhere to a regulatory framework. As opposed to prohibitory schemes that are doomed to fail, a system of regulation could help reduce fraud in the online gaming market.

3. Gambling Addiction

Regulatory bodies could require that members identify and provide support for problem gamblers. For example, regulators could require member casinos to install software that allows users to set monetary and time limits for their gambling play. A regulatory authority also could mandate that member casinos provide prominent links to organizations designed to help problem gamblers. For example, the IGC and its member casinos provide links to The Helping Hand, a Web page that contains information about Gamblers Anonymous and other sites devoted to counseling those with gambling problems. [\[FN52\]](#)

Software that limits one's gambling works only if players use it. Links to gambling support groups work only if players visit them. Surely not all problem gamblers will take advantage of these services. Neither approach, then, will eliminate problems of gambling addiction. Making these services available to online gamblers, however, may help to reduce the problem. Only a regulatory system, as opposed to ineffectual prohibition, will accomplish this goal.

*25 4. Taxes

Self-regulation by the Internet gambling industry may help protect state and federal tax revenues. If the government allows self-regulated online gambling sites to operate from the United States, domestic operators may be willing to run casinos from the United States. The states in which these casinos are located would be able to tax the revenues of these operations. Regulation also would enable federal taxing entities to keep track of gambling income for tax reporting purposes. Regulation may do nothing more than preserve the status quo. If gamblers reduce expenditures on other forms of state-regulated gambling in proportion to the amount they wager on domestic Internet casinos, the increased tax revenues collected from in-state online casino operators only will offset the reduction in revenues from other forms of gambling.

Furthermore, allowing regulated casinos to operate in a given state will not guarantee sustained tax revenues for that state. In other forms of regulated gambling, such as lotteries, horse racing or legalized casinos, geographic limitations encourage residents to wager with local gaming establishments. The Internet has no such limitations. Just because a state allows a regulated casino to operate within its borders does not mean that resident gamblers will patronize the online casino in that state. Rather, in-state gamblers may place wagers with online casinos located in other states or other countries. If the amount of out-of-state wagers placed by in-state gamblers exceeds the wagers placed by out-of-state residents on in-state casinos, the state will continue to lose tax revenue, despite the fact that it collects taxes from in-state online casinos. While legalization and industry self-regulation may help to reduce the loss of tax revenue, this course of action probably will not eliminate the problem. Nevertheless, regulation should do more to stem the loss of tax revenues than a futile attempt at prohibition.

B. Government Regulation

Although the Global Framework favors private sector regulation of online commerce, the government could choose to take an active role in regulating the Internet gambling industry. Government regulators could require online casinos operating in the U.S. to adopt measures similar to those proposed by the IGC to reduce underage gambling, remove the potential for fraud and address the issue of problem gambling. In addition, governments could help preserve tax revenues by licensing Internet casinos. For example, *26 the federal and state governments could charge annual fees for these licenses in addition to collecting taxes on the revenues generated by licensed gambling

establishments. A licensing scheme will insure that state and local governments receive revenues from domestic operators even if they cannot require that local residents gamble only on locally operated online casinos.

C. Practical Concerns

Before implementing any regulatory regime, regulators should be aware of several practical concerns. The design of the Web allows unscrupulous operators to claim falsely that they are members in good standing of a given regulatory body. For example, should the IGC adopt a seal of approval, unregulated online operators would have little difficulty copying the seal and placing it on their site, despite the fact that they are not members. [FN53] To ensure that an Internet casino is a bona fide member of a given regulatory body, the online gambler first should visit the Web page of the governing body and only connect to online casinos contained therein. An online gambler should follow this procedure every time he or she visits a favorite casino to verify that the casino remains in good standing. Any regulatory body, therefore, must advertise to make sure that online gamblers are aware of its services and follow the above-mentioned precautionary measures. These regulatory bodies also should maintain voluntary electronic mail ("e-mail") lists so they quickly can inform interested gamblers of any breaking news regarding the status of member casinos. In addition, in order to channel unsuspecting gamblers to their sites, unscrupulous operators could set-up and advertise Web sites that appear official and purport to represent a regulatory agency, but that, in actuality, are not legitimate. [FN54] Consumers must have some method for determining which regulatory agencies are legitimate.

*27 V. Conclusion

Attempts to prohibit Internet gambling, such as the IGPA, will do nothing to further the policy goals of those who favor prohibition. While regulation is not foolproof, a well conceived regulatory plan can help to reduce the number of underage gamblers, prevent fraud and assist those with gambling problems. Regulation may not be a perfect solution, but it is a better alternative.

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[FN1]. See Nat'l Gambling Impact Study Comm'n, Final Report 1-1 (1999), available at <http://www.ngisc.gov/reports/fullrpt.html> [hereinafter Final Report].

[FN2]. See id.

[FN3]. See id. at 5-3. One online casino directory contained links to 967 "Internet casinos." See Casino City, Search Results, at <http://www.casinocity.com/internet/searchresults.cfm> (last visited Oct. 23, 2000). In addition, the popular search engine Yahoo! returned a list of 384 sites when asked to run a search for the phrase "online casino." See Yahoo!, Yahoo! Search Results for online casino, at <http://search.yahoo.com/bin/search?p=online+casino> (last visited Oct. 23, 2000).

[FN4]. See Final Report, supra note 1, at 5-1.

[FN5]. See id.

[FN6]. See id. at 1-4.

[FN7]. Internet Gambling Protection Act of 1999, S. 692, 106th Cong. (1999) [[hereinafter Senate IGPA]; Internet Gambling Protection Act of 1999, H.R. 3125, 106th Cong. (1999) [hereinafter House IGPA]. Currently, there are two versions of the IGPA. Senator Kyl sponsored the Senate version, and Representative Goodlatte sponsored the House version. Both versions are substantially similar but differ in two main areas. First, the House version, unlike the Senate version, exempts fantasy sports leagues from liability. See House IGPA § 1085(a)(1)(D)(v). Second, the House version contains a provision absent from the Senate version that would impose liability on Internet Service Providers ("ISPs") who publish gambling-related advertisements. See House IGPA § 1085(d)(4)(B).

[FN8]. See House IGPA § 1085(b):

(b)Internet Gambling.-

(1)Prohibition.-Subject to subsection (f), it shall be unlawful for a person engaged in a gambling business knowingly to use the Internet or any other interactive computer service-

(A) to place, receive, or otherwise make a bet or wager; or

(B) to send, receive, or invite information assisting in the placing of a bet or wager.

(2)Penalties.-A person engaged in a gambling business who violates this section shall be-

(A) fined in an amount equal to not more than the greater of-

(i) the total amount that such person bet or wagered, or placed, received, or accepted in bets or wagers, as a result of engaging in that business in violation of this section; or

(ii) \$20,000;

(B) imprisoned not more than 4 years; or

(C) both.

See also Senate IGPA § 1085(b) (identical to House version).

[FN9]. See James Ledbetter & Steve Viuker, *Gambling online? You bet!*, (May 4, 1999), at <http://www.cnn.com/TECH/computing/9905/04/gamble.idg> ("[T]he new legislation would not punish the casual bettor."); see also [Cong. Testimony, 1998 WL 8991992](#) (explaining why provision should be removed).

[FN10]. See House IGPA § 1085(d):

(d)Interactive Computer Service Providers.-

(1)Immunity from Liability for use by Another.-

(A)In General.-An interactive computer service provider ... shall not be liable ... for the use of its facilities or services by another person to engage in Internet gambling activity that violates such law ... if-

(I) the material or activity was initiated by or at the direction of a person other than the provider;

(II) the transmitting, routing, or providing of connections is carried out through an automatic process without selection of the material or activity by the provider;

(III) the provider does not select the recipients of the material or activity, except as an automatic response to the request of another person; and

(IV) the material or activity is transmitted through the system or network of the provider without modification of its content.

In addition, an ISP that unwittingly becomes host to an online gambling site set up by a user is exempted from liability, provided the ISP removes the site from its system upon receiving notice from the government that a gambling establishment is housed on its system. See House IGPA § 1085(d)(1)(A)(ii).

[FN11]. See S. Rep. No. 106-121 § III.B.2 (1999), available at <http://thomas.loc.gov/cgi-bin/cpquery/z?cp106:sr121>: [hereinafter Senate Report].

[FN12]. See Anthony Cabot, *The Internet Gambling Report II* 34 (1998).

[FN13]. See Senate Report, *supra* note 11, § III.B.2.

[FN14]. See [Reno v. ACLU, 521 U.S. 844, 876 \(1997\)](#).

[FN15]. See Cyber Sportsbook and Casino, Money Transfers, at http://www.cybersportsbook.com/Money_TransferDemo.htm (last visited Oct. 23, 2000) (accepting credit card, bank wire and Western Union deposits); English Harbour Casino, English Harbour Casino - The Leader in Online Gaming, at <http://www.englishharbour.com/banking.html> (last visited Oct. 23, 2000) (accepting deposit by credit card, Western Union, wire transfer, money order and bank draft).

[FN16]. See [15 U.S.C. § 1643\(a\)\(1\)\(B\) \(1993\)](#) ("A cardholder shall be liable for the unauthorized use of a credit card only if ... the liability is not in excess of \$50.").

[FN17]. See [Restatement \(Second\) of Contracts § 14 \(1981\)](#).

[FN18]. Nonetheless, access by minors is one of the major policy issues raised by proponents of prohibition.

[FN19]. See Senate Report, *supra* note 11, § III.B.2; see also Final Report, *supra* note 1, at 3-6, 3-7 (discussing regulations placed upon operators of land-based casinos).

[FN20]. Indeed, a Texas plaintiff brought suit against the operator of an online casino when the casino refused to pay the plaintiff nearly \$200,000 in gambling winnings. See [Thompson v. Handa-Lopez, Inc., 998 F. Supp. 738, 738 \(W.D. Tex. 1998\)](#).

[FN21]. See Senate Report, *supra* note 11, § III.B.2.

[FN22]. See *id.*

[FN23]. See Final Report, *supra* note 1, at 7-16, 7-17.

[FN24]. See Michelle Semones, *Goodlatte's Gambling Prohibition Act Moves Swiftly Out of Judiciary Committee*, at http://www.house.gov/apps/list/press/va06_goodlatte/040600nr.html (last visited Oct. 23, 2000). Ironically, even if the voters in a given state choose to legalize Internet gambling, online gambling establishments operating legally in that state still would be criminally liable under the IGPA if citizens of other states where online gambling is not legal could access these state-sanctioned online casinos. Because the IGPA would discourage online operators from setting up shop in a state where voters legalized Internet gambling, the IGPA takes away the right of voters to decide whether online gambling should be permitted in their communities--the very right Goodlatte seeks to protect.

[FN25]. See House IGPA, *supra* note 8, § 1085(b).

[FN26]. See House IGPA, *supra* note 10, § 1085(d).

[FN27]. See *id.* § 1085 (a)(1)(D)(v).

[FN28]. See William J. Clinton & Albert Gore, Jr., A Framework for Global Electronic Commerce, available at <http://www.iitf.nist.gov/elecomm/ecom.htm> (last visited Oct. 23, 2000) [hereinafter Global Framework].

[FN29]. *Id.*

[FN30]. See *id.*

[FN31]. See *id.*

[FN32]. *Id.*

[FN33]. See Global Framework, *supra* note 28.

[FN34]. *Id.*

[FN35]. For a policy analysis of prohibition, see discussion *infra* Part IIIC.

[FN36]. See Global Framework, *supra* note 28.

[FN37]. See generally Cabot, *supra* note 12.

[FN38]. See John Edmund Hogan, Comment, [World Wide Wager: The Feasibility of Internet Gambling Regulation](#), 8 *Seton Hall Const. L.J.* 815, 851 (1998) ("[H] undreds, perhaps thousands, of Cyberspace gambling providers are located outside of United States jurisdictions.").

[FN39]. See Cabot, *supra* note 12, at 134-41; see also Nicholas Robbins, [Baby Needs a New Pair of Cybershoes: The Legality of Casino Gambling on the Internet](#), 2 *B.U. J. Sci. & Tech. L.* 7, para. 52 (1996) ("Short of a United States raid on an offshore Internet operation, or the operator visiting the United States, the federal government has very few options for shutting down Internet casinos that knowingly accept bets from the United States.").

[FN40]. See Bruce P. Keller, The Games's [sic] the [Same: Why Gambling in Cyberspace Violates Federal Law](#), 108 *Yale L.J.* 1569, 1573 n.18 (1999) (summarizing much commentary in this field).

[FN41]. See *id.*

[\[FN42\]](#). See id. at 1601-03.

[\[FN43\]](#). See Cabot, supra note 12, at 107-08.

[\[FN44\]](#). Pari-mutuel wagering is a type of gambling, such as horse racing, in which the winners draw their share from the common pool of wagers collected from all participants. See id. at 60.

[\[FN45\]](#). See id.

[\[FN46\]](#). See Global Framework, supra note 28.

[\[FN47\]](#). See Interactive Gaming Council, Welcome, at [http:// www.igcouncil.org](http://www.igcouncil.org) (last visited Oct. 23, 2000).

[\[FN48\]](#). Id.

[\[FN49\]](#). Id.

[\[FN50\]](#). See generally Adult Check, Adult Check, at [http:// www.adultcheck.com](http://www.adultcheck.com) (last visited Oct. 23, 2000).

[\[FN51\]](#). See SurfWatch, SurfWatch, at <http://www.surfwatch.com> (last visited Oct. 23, 2000).

[\[FN52\]](#). See Interactive Gaming Council, IGC - Working Groups, at [http:// www.igcouncil.org/help](http://www.igcouncil.org/help) (last visited Oct. 23, 2000).

[\[FN53\]](#). With just a few clicks of the mouse, an unscrupulous operator could download the image file containing a seal of approval using most any Web browser. See Microsoft, Saving Pictures or Text from a Web Page, at [http:// support.microsoft.com/support/IE/InProductHelp55/savetree.asp?LN=EN- US&SD=gn&FR=0](http://support.microsoft.com/support/IE/InProductHelp55/savetree.asp?LN=EN-US&SD=gn&FR=0) (last visited Oct. 23, 2000).

[\[FN54\]](#). For instance, an official-looking Web page purporting to represent an agency known as the Internet Gaming Commission ("Commission"), provides links to several "licensed" online casinos. Apparently, this organization is in no way related to the Interactive Gaming Council ("IGC"), which has the same acronym. While the authors have no information indicating that the Commission is not legitimate, unlike the IGC, the Commission does not provide the address and phone number of its main office on its Web page. See Interactive Gaming Commission, Internet Guide to Wagering Betting and Gambling on the Web, at <http://www.internetcommission.com/index.asp> (last visited Oct. 23, 2000).

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