

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

INTERACTIVE MEDIA
ENTERTAINMENT & GAMING
ASSOCIATION, INC.,

Civil No. _____

Plaintiff,

**COMPLAINT AND DEMAND FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

vs.

JOHN WILLEMS, in his official capacity
as Director of the Alcohol and Gambling
Enforcement Division of the Minnesota
Department of Public Safety,

Defendant.

PLAINTIFF, INTERACTIVE MEDIA ENTERTAINMENT AND GAMING ASSOCIATION, INC. (“iMEGA”), a not-for-profit corporation formed under the laws of the State of New Jersey and with its office and principal place of business at 1850 K. Street, NW, International Square, Suite 290, Washington, DC 20006, by way of Complaint against the named Defendant, says:

Nature of Action and Jurisdiction

1. This action for declaratory and injunctive relief arises under the First and Fourteenth Amendments to the U.S. Constitution and under federal statutory law, specifically 18 U.S.C. § 1084 and 42 U.S.C. § 1983. The Court has jurisdiction over the matters herein pursuant to the provisions of 28 U.S.C. § 1331 and other applicable federal statutes, laws, rules, and regulations therein made and provided.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this judicial district.

Parties

3. Plaintiff iMEGA is a not-for-profit corporation duly formed and constituted under the laws of the State of New Jersey. It has applied for status as a not-for-profit corporation under § 501(c)(6) of the Internal Revenue Code. Joseph M. Brennan, Jr., is iMEGA's Chairman and Chief Executive Officer.

4. iMEGA itself does not engage in electronic gaming by and through the Internet as hereinafter described, but engages in the collection and dissemination of information regarding such services.

5. Some members of iMEGA engage in electronic gaming by and through the Internet as hereinafter described, and some of them are individuals and/or business entities engaged in the business of providing interactive entertainment services to individuals through use of personal computers, both with and without a fee, for the said entertainment services.

6. Among other entertainment services, some iMEGA members provide an Internet gambling opportunity to private individuals located both within and beyond the territorial borders of the United States as a form of entertainment that can be engaged in by persons within the privacy of their homes and/or other places using private personal computers.

7. Defendant John Willems is the director of the Alcohol and Gambling Enforcement Division (“AGED”) of the Minnesota Department of Public Safety (“DPS”). He is sued in his official capacity.

Description of iMEGA and Its Members’ Activities

8. The advent of computer technology and the connectivity of computers gave rise in the last quarter-century or more to the ability to communicate and interact among individuals and business entities, among others, by use of a computer network known as the Internet, described (among other places) in *U.S. v. Extreme Associates, Inc.*, 352 F. Supp. 2d 578, 580–81 (W.D. Pa. 2005).

a. The Internet is a decentralized, global medium of communication that links people, institutions, corporations, and governments around the world. It is a giant computer network that interconnects innumerable smaller groups of linked computer networks and individual computers. Although precise estimates are difficult to formulate due to its constant and rapid growth, the Internet is currently believed to connect more than 159 countries and close to 322 million users worldwide.

b. Because the Internet merely links together numerous individual computers and computer networks, no single entity or group of entities controls all of the material made available on the Internet or otherwise limits the ability of others to access such materials. The range of digital information available to Internet users—which includes text, images, sound and video—is individually created, maintained, controlled, and located on millions of separate individual computers around the world. Each content provider of a Web site is responsible for its content.

c. The Internet presents extremely low entry barriers to anyone who wishes to provide or distribute information or gain access to it. The Internet provides an affordable means for communicating with, accessing, and posting content to a worldwide audience.

d. In the United States, individuals have several easy means of gaining access to computer communications systems in general and to the Internet in particular. Many educational institutions, businesses, local communities, and libraries maintain an easily accessible computer network linked directly to the Internet.

e. Internet service providers (“ISPs”) allow subscribers to access the Internet through the subscriber’s personal computer by using a telephone modem, broadband, including a cable modem or digital subscriber line (DSL), and dedicated access, such as a T1 line. Most ISPs charge a monthly fee in the range of \$15.00 to \$50.00, but some provide their users with free or very low-cost Internet access.

f. The World Wide Web is the most popular technology to access information on the Internet. Anyone with access to the Internet and proper software can create Web pages or home pages that may contain many different types of digital information—text, images, sound, and video. The Web comprises millions of separate Web sites that display content provided by particular persons or organizations. Any Internet user anywhere in the world with the proper software can view Web pages posted by others, read text, view images and video, and listen to sounds posted at these Web sites. Internet users wishing to make content available to others must create the content and publish it on the Internet through an ISP.

g. The Web serves in part as a global, online repository of knowledge, containing information from a diverse array of sources, which is easily accessible to Internet users around the world. Though information on the Web is contained on individual computers, each of these computers is connected to the Internet through a Web protocol, the hyper text transport protocol, that allows the information on the Web to be accessible to Web users. The content of some Web sites is available to all users while other content may not be accessible without a method of access, such as a login code, chosen by the Web site host.

h. To gain access to the information available on the Web, a person generally uses a Web “browser” to display, print, and download documents formatted in the standard Web formatting language. Each page on a Web site has an address that allows users to find and retrieve it.

9. Among other interactions, the advent of such technology gave rise to the ability of individuals and/or business entities to permit participation in games of chance and/or skill via the Internet as a form of entertainment with betting and wagering.

10. Among other entertainment activities, some iMEGA members use computer technology, including the use of computer servers and the Internet, to provide entertainment and wagering via the Internet.

11. iMEGA members maintain such computer technology and computer servers at locations outside the United States.

12. In all said locations of iMEGA members’ computer servers, wagering on games of chance and/or skill via the Internet is a legal activity permitted by law therein.

13. In all said locations of iMEGA members' computer servers, accepting sums of money by wire transfer, credit and/or debit card transaction, and/or by mail or telephone transfer, is a legal activity permitted by law therein.

14. Some of iMEGA's members engage in the business of maintaining activities known as "Internet Casinos," the same being a computer image generated and supported by computer technology and accessible to anyone wishing to engage in games of chance and/or skill, including but not limited to wagering on said games of chance and/or skill.

15. Persons wishing to engage in games of chance and/or skill and betting or wagering on them through iMEGA members' Internet Casinos may originate such an activity while located anywhere in the world, including but not limited to any jurisdiction of the United States.

Description of Defendant's Actions and the Nature of Internet Activities

16. On or about April 24, 2009, Mr. Willems, acting in his capacity as director of AGED, sent notices to eleven national and regional companies with a list of nearly 200 "online gambling sites" and instructed the companies "to block access to these sites by customers located within Minnesota." True and correct copies of the notices and the list of sites are attached hereto as Exhibit A.

17. Member(s) of iMEGA own one or more of the sites mentioned in the notices.

18. The notices state that the gambling opportunities available on the sites are "illegal within Minnesota." Regardless of whether this is an accurate statement of the

law, merely visiting the sites and perusing their content is not illegal in Minnesota, and the notices do not claim that it is.

19. The notices cited 18 U.S.C. § 1084(d) as authority for the State of Minnesota (through the Defendant) to demand that the providers block Minnesotans' access to the sites. In its entirety, § 1084, which is also known as the Wire Act, reads as follows:

Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement

agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

20. A press release from DPS dated April 29, 2009, stated that Mr. Willems “anticipates the program expanding to address thousands of sites.” A true and correct copy of the press release is attached hereto as Exhibit B. iMEGA has no way of knowing how many of its members might be affected adversely by an expansion of the State’s enforcement efforts.

21. The notices were sent to the following companies in the following cities:

1.	AT&T Internet Services	San Antonio, Texas
2.	Charter Communications	St. Louis, Missouri
3.	Comcast Cable	Moorestown, New Jersey
4.	Direct TV	Los Angeles, California
5.	Dish Network	Englewood, Colorado
6.	Embarq	Overland Park, Kansas
7.	Sprint/Nextel	Overland Park, Kansas
8.	Frontier Communications	Stamford, Connecticut
9.	Qwest	Denver, Colorado
10.	Verizon Wireless	Bedminster, New Jersey
11.	Wildblue Communications	Greenwood Village, Colorado

22. As the table reflects, all of the companies are located outside of Minnesota. Further, and on information and belief, all of the companies have networks that cross state boundaries, and all of them serve Internet subscribers other than individuals who reside in Minnesota.

23. The notices on their face were sent to the companies in the table in their capacity as providers of broadband Internet service.

24. There are two principal kinds of broadband Internet service: cable modem service and digital subscriber line service.

25. The Defendant's list of gambling sites featured four categories of information: the site's name; Web address, also known as Uniform Resource Locator ("URL"); Internet Protocol ("IP") address; and phone number. The notices stated, "The provided list should provide sufficient information for your network systems personnel to block access to these sites by customers located within Minnesota."

26. An IP address is a number assigned to computers and other devices participating in networks such as the Internet. Although each computer or device that connects to the network has a unique IP address, many Web sites can share a single IP address. In fact, recent research indicates that at least fifty percent of Web sites share an IP address with at least fifty other Web sites. *See Ctr. for Democracy and Tech. v. Pappert*, 337 F. Supp. 2d 606, 619 (E.D. Penn. 2004).

27. Some of the sites identified in the Defendant's list are currently accessible from Minnesota-based computers.

28. Some of the sites identified in the Defendant's list, such as Everest Poker, www.everestpoker.com, and PartyCasino, www.partycasino.com, bar the participation of individuals in the United States.

29. Some of the sites identified in the Defendant's list, such as 32 Red Casino, www.32red.com, and Golden Palace, www.goldenpalace.com, offer only casino-style games.

30. Some of the sites identified in the Defendant's list offer not only opportunities to place bets but also information about the origins of popular casino games as well as rules for such games and strategies for winning them.

31. For example, Casino Room, www.casinoroom.com, has a virtual "lounge" where visitors can read about the history of Blackjack, as well as its risks and rewards:

Blackjack is one of the most popular casino games with a long, rich history. Blackjack's precursor was vingt-et-un ("twenty-one"), which first appeared in French casinos around 1700.

Blackjack got its current name due to a bonus payout that was added in an attempt to make the game more popular with players. If a player was dealt an ace of spades and a black Jack (either spades or clubs), the player received a special bonus payout of 10-1.

The bonus payout hand was called a "blackjack" (due to the requirement that the Jack be spades or clubs) and the name stuck to the game, despite the fact that casinos quickly stopped paying out the 10-1 bonus. Today any hand with an A and a 10 value card is called a blackjack, regardless of suit.

32. For further example, Wild Jack Casino, www.wildjack.com, provides a history of casino gambling:

Casino gambling began in Europe and the Italian word "casino" originally meant a small villa or summerhouse, usually built on the grounds of a larger Italian home or palace. During the 19th century, the term casino came to include public buildings where gambling and sports took place. In the U.S., where immigrants brought with them familiar gambling games, houses and halls in which to play became commonplace. During the early 1800s, gambling on riverboats became fashionable and beautiful floating casinos graced the waters of the Mississippi and Ohio Rivers.

33. Some of the sites identified in the Defendant's list offer not only opportunities to place bets but also blogs and chat rooms.

34. For example, Full Tilt Poker, www.fulltiltpoker.com, features the Full Tilt Poker Blog by Michael Craig at <http://www.fulltiltpoker.com/poker-blog/>. Among other things, the blog discusses the economy and the need for charitable giving (post on May 1, 2009) and the importance of supporting cancer research (post on March 25, 2009).

35. Full Tilt Poker also features various chat rooms, chat archives, and an "online poker forum" at <http://pokerforums.fulltiltpoker.com/>. In the forum, Internet users can join a variety of discussions, including one called the "Player's Lounge," which is dedicated to any "any non-poker related topics." Discussion threads in the Player's Lounge range from topics such as comedian Jimmy Fallon's new late-night television show to questions about the transmission of swine flu.

36. Some of the sites identified in the Defendant's list offer not only opportunities to place bets but also free entertainment in the form of casino-style games that site users can play without betting on the outcome.

37. For example, Cool Cat Casino, www.coolcat-casino.com, allows Internet users to play Blackjack and other games for free.

Description of the Effect of Defendant's Activities

38. Available technologies do not permit ISPs to effectively block all Minnesotans' access to the gambling sites identified by the Defendant without also blocking their access to indisputably legal sites that do not offer any gambling

opportunities whatsoever and that contain information on matters of public interest and concern.

39. By way of explanation, ISPs might choose to block Minnesotans' access to a particular site by restricting their access to the site's IP address. However, because multiple Web sites often share a single IP address, this approach would prevent Minnesotans from accessing not only the allegedly illegal gambling site affiliated with the particular IP address as identified in the Defendant's list, but also an undetermined number of other sites.

40. Likewise, on information and belief, available technologies do not permit the ISPs that received the Defendant's notices, all of which are located outside Minnesota, to block Minnesotans' access to particular sites without also blocking the access of ISP subscribers in other states, over whom the Defendant has no authority.

41. Further, even if it was technologically possible to completely block access only to those sites identified in the Defendant's list and only for Minnesotans, the Defendant's attempt to prevent illegal Internet gambling in Minnesota by blocking all Minnesotans' access to those sites would prevent Minnesotans from accessing indisputably legal material that is of public concern and that is protected by the First Amendment, such as historical information about gambling, and information completely unrelated to such gambling and games of chance and/or skill, such as information about charitable giving, cancer research, new television shows, and global influenza epidemics.

42. In addition to infringing the ability of Minnesotans to receive information, blocking Minnesotans' access to particular sites would impair the ability of entities who own the sites to communicate online with Minnesota residents.

43. Likewise, blocking access to the sites identified in the Defendant's list would impair the ability of Minnesotans to contribute to online conversations.

44. Blocking access to the sites identified in the Defendant's list would also prevent Minnesotans from engaging in legal games available in sites for which no bets or wagers are made.

45. The Defendant's notices do not specify a date by which recipients must block Minnesotan's access to the identified IP addresses. However, § 1084(d) states that common carriers must "discontinue or refuse, the leasing, furnishing, or maintaining of such facility after reasonable notice to the subscriber." Further, the DPS press release states that "[r]esponse from the notified ISPs is expected within two to three weeks, at which time issues of non-compliance will be referred to the Federal Communications Commission."

46. iMEGA members and other Web site owners therefore face an imminent threat to their right to communicate with Minnesotans.

47. Individual Minnesotans face an imminent threat to their right to access and receive information provided by iMEGA members and other Web site owners, to participate in online conversations that may or may not be related to gambling, and to engage in free games of chance and/or skill.

Count One

Declaration that 18 U.S.C. § 1084 Does Not Provide to Defendant the Authority to Demand that Internet Service Providers Block Minnesotans' Access to Online Gambling Sites

48. Plaintiff repeats and realleges the allegations in the proceeding numbered paragraphs.

49. 18 U.S.C. § 1084 allows common carriers subject to the jurisdiction of the Federal Communications Commission to “discontinue or refuse” the “leasing, furnishing or maintaining” of a “facility” to subscribers.

50. ISPs that provide broadband Internet service are not common carriers subject to the jurisdiction of the Federal Communications Commission.

51. Blocking access to a particular Web site is not discontinuing or refusing the “leasing, furnishing or maintaining” of a “facility.”

52. Section 1084 requires a common carrier to discontinue the leasing of a facility only when notified in writing by a state law enforcement agency “acting within its jurisdiction.”

53. The State of Minnesota has jurisdiction over only activities occurring within its physical and/or geographic boundaries.

54. Defendant did not act within the jurisdiction of the State of Minnesota when he demanded action by Internet service providers located outside of the State’s physical boundaries.

55. In addition, Defendant did not act within the jurisdiction of the State of Minnesota when he sent the notices because, on information and belief, none of the sites

identified in the Defendant's list are owned by entities within the jurisdiction of, or subject to prosecution by, the State of Minnesota.

56. Unless relief is granted by this Court, the Defendant's attempt to use § 1084 to block Minnesotans' access to certain Web sites will in the immediate future irreparably harm iMEGA members, other Web site owners, and citizens of the State of Minnesota and of other states.

WHEREFORE, Plaintiff demands judgment

a. Declaring and adjudicating that 18 U.S.C. § 1084 does not provide to Defendant the authority to demand that Internet service providers block Minnesotans' access to online gambling sites.

b. Enjoining Defendant and his officers, agents, and employees, and any person in active concert or participation with them who receives actual notice of the Injunction by personal service or otherwise, from attempting to block Minnesotans' access to online gambling sites by issuing notices to Internet service providers such as the ones attached hereto as Exhibit A.

c. Requiring Defendant to immediately notify the Internet service providers listed in Paragraph 21, above, that Defendant is withdrawing the notices dated April 24, 2009, and that the Internet service providers should not block Minnesotans' access to any of the gambling sites, URLs, or IP addresses listed in the notices.

d. For all other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

Count Two

Violation of Free Speech Rights Guaranteed by the First Amendment of the U.S. Constitution

57. Plaintiff repeats and realleges the allegations in the proceeding numbered paragraphs.

58. The Defendant's attempt to prevent illegal Internet gambling in Minnesota by blocking all Minnesotans' access to certain sites is overbroad and violates the free speech rights set forth in the First Amendment of the U.S. Constitution of each and every Minnesotan as well as each and every entity that owns a Web site that would be blocked, including the entities who own the gambling sites identified in the Defendant's list, one or more of which are iMEGA members.

59. In addition, the Defendant's attempt to prevent illegal Internet gambling in Minnesota by blocking all Minnesotans' access to sites is under-inclusive because the Defendant has attempted to block access to only an "initial sample" of about 200 sites even though, by his own admission in the DPS press release, "thousands" of such sites exist.

60. The Defendant's list does not include other significant poker destinations with more prominence and traffic than the ones on Defendant's list.

61. The Defendant's list is also under-inclusive because, in some instances, it provides to the Internet service providers "deep links" as opposed to sites' primary URLs.

62. Although it will impede access to particular sites by Minnesota residents and thereby impair the interests of those residents and site operators, the Defendant's

attempt to prevent online gambling by blocking access to particular sites is likely to be ineffective because site owners can evade various filters imposed by the ISPs. For example, IP filtering can be evaded by changing a site's IP address. Consequently, the Defendant's actions are not likely to further the purported governmental interest of alleviating the harms of illegal gambling.

63. Defendant's efforts are likely to be especially ineffective to the extent that the notices have identified deep links rather than primary URLs.

64. Defendant's actions, taken under color of state law, amount to a prior restraint on the free speech rights of iMEGA members, the citizens of the State of Minnesota, and others, in violation of the First Amendment to the U.S. Constitution, as applied to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983.

65. Defendant's actions violate the First Amendment to the U.S. Constitution, as applied to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983 by preventing legally protected information from reaching Minnesota computers, as well as computers outside of the State, and by preventing Minnesotans and others not only from accessing such information but also from participating in legal online discussions.

66. Defendant's actions also violate the First Amendment to the U.S. Constitution, as applied to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983 by restricting the Internet access of individual Minnesotans as well as residents of other states, regardless whether those individuals have ever made an allegedly illegal online bet or have ever even visited a site on which allegedly illegal bets can be made.

WHEREFORE, Plaintiff demands judgment

a. Declaring and adjudicating that Defendant, acting in his capacity as Director of AGED, violated the guarantees of the First and Fourteenth Amendments of the U.S. Constitution, in violation of 42 U.S.C. § 1983.

b. Enjoining Defendant and his officers, agents, and employees, and any person in active concert or participation with them who receives actual notice of the Injunction by personal service or otherwise, from attempting to block Minnesotans' access to online gambling sites by issuing notices to Internet service providers such as the ones attached hereto as Exhibit A.

c. Requiring Defendant to immediately notify the Internet service providers listed in Paragraph 21, above, that Defendant is withdrawing the notices dated April 24, 2009, and that the Internet service providers should not block Minnesotans' access to any of the gambling sites or IP addresses listed in the notices.

d. An Order that Plaintiff recover its costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 in connection with this action.

e. For all other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

Count Three

Violation of the Commerce Clause of the U.S. Constitution

67. Plaintiff repeats and realleges the allegations in the proceeding numbered paragraphs.

68. On information and belief, the ISPs that received the Defendant's notices cannot block Minnesotans' access to particular gambling sites without also blocking the access of residents of other states where Defendant has no authority and where online gambling may or may not be legal.

69. The Defendant's action therefore threatens to block lawful interstate and international commerce, both within and outside of Minnesota. The State of Minnesota has no power to regulate or to seek to regulate interstate or foreign commerce.

70. Unless relief is granted by this Court, the Defendant's conduct will in the immediate future have a significant and irreparable harmful effect on interstate commerce by interfering with commercial and other speech of both Internet speakers and listeners, including Plaintiff and its members and their customers, beyond the borders of Minnesota, in violation of the Commerce Clause of the U.S. Constitution.

71. The Defendant's conduct violates the dormant commerce clause.

WHEREFORE, Plaintiff demands judgment

a. Declaring and adjudicating that Defendant, acting in his capacity as Director of AGED, has violated the Commerce Clause of the U.S. Constitution.

b. Enjoining Defendant and his officers, agents, and employees, and any person in active concert or participation with them who receives actual notice of the Injunction by personal service or otherwise, from attempting to block Minnesotans' access to online gambling sites by issuing notices to Internet service providers such as the ones attached hereto as Exhibit A.

c. Requiring Defendant to immediately notify the Internet service providers listed in Paragraph 21, above, that Defendant is withdrawing the notices dated April 24, 2009, and that the Internet service providers should not block Minnesotans' access to any of the gambling sites or IP addresses listed in the notices.

d. For all other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

Dated _____

John P. Borger (Bar No. 9878)
E-mail: jborger@faegre.com
Leita Walker (Bar No. 387095)
E-mail: lwalker@faegre.com
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Telephone: (612) 766-7000
Facsimile: (612) 766-1600

fb.us.3956650.10