

OVER-PLAYING A WEAK HAND: WHY GIVING INDIVIDUAL STATES A CHOICE IS A BETTER BET FOR INTERNET GAMBLING IN THE UNITED STATES

INTRODUCTION

As the rest of the world moves to accept, regulate, and profit from Internet casinos, the United States recently chose the opposite path, enacting its latest form of domestic prohibition. Seemingly not learning from prior futile attempts at alcohol and drug prohibition, Congress recently ignored policy findings that individual states should decide the legality of gambling within their respective borders,¹ and passed the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).² Consequently, shockwaves³ traveled throughout Europe where countries like Britain have been working toward global legalization, regulation, and taxation of Internet gambling.⁴ However, in passing the UIGEA, the United States sent a clear message: they have no interest in a global regulation plan and the United States will no longer be a provider of Internet gambling revenues. A superior approach would be for the United States to follow the policies set forth in the Interstate Horseracing Act (IHA) allowing individual states to create their own laws

1. Found in the Interstate Horseracing Act (IHA). 15 U.S.C. § 3001 (2005) (providing Congressional findings and policy supporting state choice that are in direct opposition to creating a nationwide blanket prohibition on gambling in any form).

2. H.R. 4954, 109th Cong. (2006).

3. See Shelley Emling, *Online Gambling: New Law Deals Devastating Blow; U.S. Ban on Money Transfers Hurts*, ATLANTA J.-CONST., Nov. 10, 2006, at 1F (reporting the online gambling industry is facing billions in losses, the market value of online companies have plummeted on the London Stock Exchange, and a dozen countries attended a conference aimed at rescuing the Internet gambling industry as a result of the Act); see also Eric Pfanner & Heather Timmons, *U.K. Seeks Global Rules for Online Gambling*, INT'L HERALD, Nov. 2, 2006, at 14 (reporting the market value of publicly traded online gambling stocks has dropped \$7.6 billion due to the United States actions).

4. See Pfanner, *supra* note 3, at 14.

concerning Internet casinos, and therefore give the states the freedom to run interstate operations with other similarly situated states, benefiting accordingly.

The UIGEA aspires to cut off the largest source of Internet gambling revenue in the world⁵ and put the United States directly at odds with one of its closest allies, the United Kingdom.⁶ Apparently, the United States believes that no form of regulation would suffice to remove the perils associated with online gambling. Fueled by this belief, Congress has refused to study the Internet's fastest growing industry in order to make an educated determination of how to regulate it.⁷ Instead, Congress created the UIGEA to cut off the flow of money from the United States to foreign Internet casinos by imposing strict regulations on all domestic financial institutions designed to "identify and block or otherwise prevent or prohibit restricted transactions."⁸

Such extreme prohibitive measures are unnecessary. Part I of this note provides an overview of the history of gambling in the United States and how state governments have used various forms of gambling as reliable revenue sources for many years. This Part addresses the overwhelming presence of gambling in the United States, the rise of Internet gambling, and the initial stance of the states toward Internet gambling coupled with how that stance has changed overtime. A brief overview of the problems Congress associates with Internet gambling and the ineffective federal laws used in an attempt to curb these problems follows, along with how enforcement has become even more difficult due to global expansion and acceptance of Internet gambling.

Part II of this note examines the Unlawful Internet Gambling Enforcement Act of 2006 and its definitions, policies, and procedures. Part III addresses specific loopholes found within the UIGEA, possible ways American gamblers can use

5. See Michael McCarthy & Jon Swartz, *New Legislation May Pull the Plug on Online Gambling; Ban Would Prohibit Use of Credit Cards, Electronic Funds for Internet Gaming*, USA TODAY, Oct. 3, 2006, at 18A.

6. Pfanner, *supra* note 3, at 14.

7. 152 Cong. Rec. H8026 (daily ed. Sept. 29, 2006) (statement of Rep. Porter); see generally H.R. 5474, 109th Cong. (2006) (proposed bill to study Internet gambling).

8. H.R. 4954, 109th Cong. (2006).

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these loopholes to get around the UIGEA, and different policy problems that will arise because of the UIGEA. This Note concludes with a proposal to permit individual states to determine whether to allow Internet gambling within their respective borders. This proposal focuses on how allowing individual states to make their own choice on regulation will sufficiently shift the burden of regulation to deserving parties, uphold the notion that the states should determine appropriate forms of gambling within their borders, and permit those states that wish to participate to receive extraordinary tax revenues.

I. RIDING THE WAVE: EVOLUTION OF THE TECHNOLOGICAL AND GEOGRAPHICAL EXPANSION OF GAMBLING

A. Shuffle Up and Deal: Gambling's History in the United States

Gambling activity, and the controversy surrounding it, has long been an integral part of the United States.⁹ Colonial and state governments embraced gambling as a simple and essential way to raise revenue.¹⁰ But during the nineteenth century, gambling took on the image of an immoral activity, fit only for the lazy, and in conflict with the Puritan work ethic.¹¹ This opposition put an end to legalized gambling in America until the twentieth century.¹²

In 1931, gambling came roaring back to the United States when Nevada established the first modern casino in an effort to revitalize its economy in the aftermath of the Great

9. See JOHN LYMAN MASON & MICHAEL NELSON, *GOVERNING GAMBLING* 8-9 (2001); see also Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U. L. REV. 371, 394 (2006).

10. Colonial and state governments used gambling revenues to fund wars, build road and canals, establish jails, and finance the construction of universities. MASON, *supra* note 9, at 8-9.

11. See Hurt, *supra* note 9, at 396-97.

12. In the nineteenth century, states abolished the use of private lotteries. The ban lasted until the Louisiana Lottery Company commenced an eventual nationwide lottery at the end of the Civil War. Eventually, facing pressure from other states upset about watching money flow outside of their borders to Louisiana, the United States put a national ban on lotteries until the 1960's. This ban lasted until New Hampshire re-legalized the state controlled lottery in 1964. See MASON, *supra* note 9, at 8-9.

Depression.¹³ Shortly thereafter, wagers on horse and dog racing became a major source of entertainment and revenue as nearly every state government legalized such activity and built tracks in their state.¹⁴ Likewise, other states began to illustrate the desire to follow Nevada's lead and legalize casino gambling within their borders.¹⁵ As the United States approached the twenty-first century, the gambling renaissance continued as more and more states adopted lotteries, built betting tracks, and constructed casinos in an effort to catch a piece of the gambling revenue pot.¹⁶

As this renaissance furthered, it became apparent that gambling was becoming a staple of American culture. The United States now so fully embraces gambling that various forms of "brick-and-mortar"¹⁷ casinos currently generate revenue and provide entertainment in twenty-five states.¹⁸ States vociferously promote and advertise¹⁹ the once chastised lottery in its return as a major revenue source in forty states and the District of Columbia.²⁰ Further, the American gambler looking for a live show can now attend race tracks and wager on horse racing in all but seven states,²¹ thus making horse race betting the most widespread form of gambling in the United States.

13. *Id.* at 29.

14. See William A. Taggart & Jacqueline Wilks, *Gambling in the American States: "Finding Some Action" Has Never Been Easier*, 9 GAMING L. REV. 3, 3 (2005).

15. See MASON, *supra* note 9 at 33-38 (In 1976 New Jersey became the second state to legalize casino gambling).

16. See *id.* at 29-32; see also Hurt, *supra* note 9, at 397-99 (giving an overview of gambling's resurgence in the United States).

17. Brick-and-mortar is the common term for traditional physically built casinos or non-Internet casinos. See Jonathan Schwartz, Essay, *Click the Mouse and Bet the House: The United States' Internet Gambling Restrictions Before the World Trade Organization*, 2005 U. ILL. J.L. TECH. & POL'Y 125, 126 (2005).

18. See CasinoGambling.About.com, Casino Directory, <http://casinogambling.about.com/od/casinosusa/Casinos.htm/> (giving a list of casinos by State) (last visited Mar. 25, 2007).

19. See, e.g., Scott M. Montpas, Comment, *Gambling On-Line: For a Hundred Dollars, I Bet You Government Regulation Will Not Stop the Newest Form of Gambling*, 22 DAYTON L. REV. 163, 166 (1996) (stating that New York spent \$41 million advertising its lottery; see generally MASON, *supra* note 9, at 22-23 (giving overview of state advertising for gambling)).

20. See Hurt, *supra* note 9, at 398.

21. Cf. *id.* at 441 n.184.

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Such prevalent and constant access to multiple forms of gambling throughout the nation²² has allowed Americans to wager more than \$630 billion annually on state sanctioned gambling activities.²³ Overall, the states combined are accumulating \$72 billion in gross revenue per year from state-taxed gambling alone.²⁴ These exorbitant revenues have permitted states to keep taxes low,²⁵ while still making vast improvement within their borders.²⁶ It is evident that the large majority of states no longer consider gambling immoral, but rather an essential revenue generator.

B. Building the Pot: The Internet Gambling Revolution and the Off-the-Cuff Reaction by the United States

With gambling's popularity at an all-time high, it appeared the states found an unending source of income. However, just over ten years ago, the states encountered something they feared would change all this—gambling via the Internet. In August of 1995, the Internet gambling revolution officially began.²⁷ The states and the federal government immediately deemed this new form of gambling unacceptable.²⁸ Initially, casinos, racetracks, American Indian casinos, other gaming industries, religious and social groups, and various professional sports leagues joined the states and the federal government in opposition to Internet

22. Currently forty eight out of the fifty states permit and profit from some form of legalized gambling. Only Hawaii and Utah have a complete ban on gambling in every form. Martin D. Owens Jr., *If You Can't Beat 'Em, Will They Let You Join? What American States Can Offer to Attract Internet Gambling Operators*, 10 GAMING L. REV. 26, 32 (2006).

23. Schwartz, *supra* note 17, at 125; see Nat'l Gambling Impact Study Comm'n, Final Report 1-1 to -2 (1999), available at <http://govinfo.library.unt.edu/ngisc/reports/1.pdf>.

24. Joseph J. McBurney, *To Regulate or to Prohibit: An Analysis of the Internet Gambling Industry and the Need for a Decision on the Industry's Future in the United States*, 21 CONN. J. INT'L L. 337, 346 (2006).

25. *Id.* at 347.

26. For example, Colorado has used revenue received from state taxed casinos and lotteries to fund State parks, build youth sports complexes, fix auditoriums, and support local libraries. John Hazlehurst, *States Earn Big Money from Lotto and Casinos*, COLO. SPRINGS BUS. J., Sept. 15, 2006.

27. The first Internet casino, Interactive Casinos, Inc., opened its doors to the public on August 18, 1995. Jenna F. Karadbil, Note, *Casinos of the Next Millennium: A Look into the Proposed Ban on Internet Gambling*, 17 ARIZ. J. INT'L & COMP. L. 413, 415 (2000).

28. *Cf.* Schwartz, *supra* note 17, at 126.

gambling.²⁹

State governments feared this new form of gambling would divert funds from state-promoted and state-taxed gambling.³⁰ Therefore, some states attempted to entrench their gambling monopolies³¹ by regulating or prohibiting Internet gambling through an exercise of their police power.³² Generally, the police power allows individual states to create, modify, or repeal gambling policies without concern for any other state or federal law.³³ Accordingly, individual states took it upon themselves to protect state-taxed gambling by drafting laws making the creation and use of Internet casinos illegal.³⁴ For example, Nevada created a state law making all bets accepted or received via the Internet illegal.³⁵ Likewise, Illinois, Indiana, Louisiana, Montana, Oregon, South Dakota,³⁶ and recently Washington³⁷ have also passed legislation that bans the use of Internet gambling sites, while Minnesota, New Jersey, New York, and Wisconsin have publicly stated that they will rely on existing

29. McBurney, *supra* note 24, at 347.

30. See Owens Jr., *supra* note 22, at 26-27 (explaining a theory that the states are no longer impartial judges on the issue of gambling because they have an incentive to keep gamblers spending money on state controlled and taxed gambling rather than sending that money to an offshore Internet casino).

31. Cf. Linda J. Shorey et al., *Do State Bans on Internet Gambling Violate the Dormant Commerce Clause?*, 10 GAMING L. REV. 240, 242 (2006); see, e.g., LA. REV. STAT. ANN. § 14:90.3 (2006) (making it illegal to gamble via the Internet in Louisiana while recognizing numerous legalized gaming activities permitted within the state). Compare 720 ILL. COMP. STAT. 5/28-1(a)(12) (2007) (making the creation of an Internet gambling site and the use thereof a crime in Illinois), with 720 ILL. COMP. STAT. 5/28-1(b)(1)-(11) (2007) (making various other forms of gambling that are promoted by the state activities where participants “shall not be convicted of gambling therefore”).

32. Owens Jr., *supra* note 22, at 31.

33. See *id.*

34. Shorey, *supra* note 31, at 243; see, e.g., 720 ILL. COMP. STAT. 5/28-1(a)(12) (2007); IND. CODE §§35-45-5-2 (2006); LA. REV. STAT. ANN. § 14:90.3 (2006); MONT. CODE ANN. § 23-5-112(17)-(18) (2005); OR. REV. STAT. § 167.109 (2006); and S.D. CODIFIED LAWS §§ 22-25A-1 to 22-25A-15 (2006).

35. See Shorey, *supra* note 31, at 243; NEV. REV. STAT. §§ 465.092 – 465.094 (2007).

36. Illinois, 720 ILL. COMP. STAT. 5/28-1(a)(12); Indiana, IND. CODE §§35-45-5-2; Louisiana, LA. REV. STAT. ANN. § 14:90.3; Montana, MONT. CODE ANN. § 23-5-112(17)-(18); Oregon, OR. REV. STAT. § 167.109; and South Dakota, S.D. CODIFIED LAWS §§ 22-25A-1 to 22-25A-15.

37. Justin Berton, *Online Poker Players Face New Prohibition*, S. F. CHRON. Aug. 27, 2006 at A1.

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federal laws to deter usage.³⁸

Such strong opposition from within the United States effectively forced Internet casinos to set up their servers in foreign jurisdictions that welcomed this revenue opportunity with open arms.³⁹ Subsequently, Internet gambling quickly spread throughout the globe. In less than a decade Internet gambling became the largest revenue-generating online business with annual revenues over \$12 billion⁴⁰ through more than 2,500 sites worldwide.⁴¹ Up until passage of the Unlawful Internet Gambling Enforcement Act, the industry had experienced unimpeded growth with revenues projected to more than double by 2010.⁴²

As time passed and the industry continued to thrive, casinos and certain state governments realized the massive amount of revenue available from Internet gambling. The American Gaming Association (AGA) furthered this belief when it found that Internet gambling has not adversely affected domestic casinos.⁴³ As Internet gaming surpassed a decade of existence, the extraordinary revenue realized along with the unparalleled growth levels spawned a movement of some states wanting to join the thriving industry and tap into these revenues.

In 2001, Nevada became the first state to switch sides on the debate when it drafted and proposed a state bill to legalize the activities of Internet casinos within Nevada state lines.⁴⁴ However, the Department of Justice quickly put a stop to any such thoughts when it issued a letter to the Nevada Gaming Commission explaining that Internet gambling is illegal under

38. Megan Downs, *N.D. Lawmaker Seeks Licensing of Internet Poker Sites*, WASH. INTERNET DAILY, July 21, 2006.

39. Including Caribbean Island nations such as Antigua and Barbuda, along with Costa Rica, Australia, and the British controlled Isle of Man. See McBurney, *supra* note 24, at 352-59.

40. Ryan Kim, *Royally Flushed; Congress Moves to Severely Limit Online Gambling, Fund Transfers*, S.F. CHRON., Oct. 3, 2006, at C1.

41. Jim Puzanghera, *House to Vote on Bill to Curb Online Gambling*, L. A. TIMES, July 11, 2006, at 10.

42. Suzette Parmley, *The Line on Online Gambling: Some Want More Regulation; Casinos Want a Share*, PHILA. INQUIRER, Aug. 6, 2006, at E01 (projecting revenue of \$25 billion by 2010).

43. Puzanghera, *supra* note 41, at 10 (according to group's spokeswoman Holly Thomsen).

44. Act of June 14, 2001, ch. 593, § 2, 2001 Nev. Stat. 3075; Downs, *supra* note 38; see also Shorey, *supra* note 31, at 244.

federal law.⁴⁵ Similar legislation legalizing Internet gambling was proposed and eventually rejected in the Virgin Islands and North Dakota because of similar reaction from the Department of Justice.⁴⁶ Despite the changing views in various states and casinos alike, currently no state has successfully made it legal to gamble through Internet casinos, nor has any state successfully welcomed Internet casinos to operate within its borders.

However, numerous states license and promote Internet gambling, albeit this is limited to wagers on horse racing.⁴⁷ The Federal government expressly allows such activity via the IHA.⁴⁸ Congress established the IHA as a result of policy findings that “[s]tates should have the primary responsibility for determining what forms of gambling may legally take place within their borders,” that the role of the federal government should be to “prevent interference by one State with the gambling policies of another,” and for interstate off-track wagering on horse races, “there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.”⁴⁹ Although Congress initially adopted these findings before Internet gambling came to rise, it has since explicitly provided that such activity may continue in the face of the UIGEA.⁵⁰

Despite such a policy for horse racing, Congress has spent the last decade attempting to draft and pass legislation prohibiting the use of Internet casinos in the United States.⁵¹ This inconsistent policy has forced the federal government to rely on outdated and ineffective law in its effort to keep Internet casinos out of the United States.

45. See Downs, *supra* note 38.

46. *Id.*

47. Twelve states currently license, promote, and profit from Internet wagering on horse racing. See Owens Jr., *supra* note 22, at 29.

48. 15 U.S.C. §§ 3001-3007 (2005).

49. 15 U.S.C. § 3001(a).

50. The UIGEA has an explicit exception stating that the term ‘unlawful Internet gambling’ does not include any activity allowed under the IHA. H.R. 4954, 109th Cong. (2006).

51. See McBurney, *supra* note 24, at 348 (stating Congress has been trying to officially prohibit Internet gambling since 1996).

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C. Seven Deuce Off-Suit: The Shortcomings of Prior Federal Laws

The United States has declared Internet gambling an unlawful act and a significant problem that the federal government must stop.⁵² The government argues that Internet gambling facilitates money laundering and that the industry as a whole is open to corruption.⁵³ Further, the United States feels Internet gambling is more addictive than regular gambling because of its easy access and constant action, and that it is dangerous for minors because they can accumulate large debts on their parents' credit cards.⁵⁴

Ever since the government deemed Internet gambling an unlawful act, it has been confronting troubling issues of enforcement. Prior to the UIGEA, the Federal government primarily relied on three federal statutes in its attempt to prohibit Internet gambling in the United States.⁵⁵ These were the Wire Act of 1961,⁵⁶ the Travel Act,⁵⁷ and the Illegal Gambling Business Act.⁵⁸ However, several significant problems rendered these laws ineffective for curbing Internet gambling interest in the United States. The numbers undeniably illustrate this. Of the \$12 billion in revenue earned through Internet casinos last year, nearly half came from bets placed within the United States.⁵⁹ The main setback is that Congress created these acts before gambling on the Internet was even a possibility,

52. See 152 Cong. Rec. H4978 at H4983-84 (statement of Rep. Oxley); see also *McBurney*, *supra* note 24, at 348; see also *Downs*, *supra* note 38.

53. 152 Cong. Rec. H4978 at H4983-84 (statement of Rep. Oxley);

54. See *id.* at H4986-87 (statements of Rep. Bachus).

55. For a more detailed discussion about the original Federal Acts used in the United States to fend off Internet casinos, see Joel Weinburg, Comment, *Everyone's A Winner: Regulating, Not Prohibiting, Internet Gambling*, 35 SW. U. L. REV. 293, 302-09 (2006).

56. The Wire Act makes it a crime for those in the business of betting or wagering to "knowingly use a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers . . . on any sporting event or contest." 18 U.S.C. § 1084 (2005).

57. The Travel Act creates criminal liability for whoever travels in interstate or foreign commerce with the intent to distribute the proceeds of unlawful activity, including gambling, or otherwise promote, manage, or facilitate in any way any unlawful activity. 18 U.S.C. § 1952 (2005).

58. The Illegal Gambling Business Act directly prohibits involvement with an illegal gambling business in any form. 18 U.S.C. § 1955 (2005).

59. Kim, *supra* note 40, at C1.

leaving major loopholes in enforcement.⁶⁰ Additionally, because the United States has pushed away Internet gambling sites, it has forced all current Internet gambling businesses to set up outside of the United States' jurisdiction.⁶¹ At the same time the United States was pushing Internet casinos away, foreign countries such as Antigua and Barbuda (hereinafter Antigua), Costa Rica, Australia, and various British controlled territories were happy to welcome the industry.⁶²

The success of the industry quickly led to global expansion. Currently, more than eighty-five countries, including France, Germany, and Britain, allow citizens to partake in Internet gambling in some form.⁶³ In addition, a large number of Internet casinos receive a majority of their revenues⁶⁴ from the United States and therefore are not likely to voluntarily extract these revenues out of their own pockets.⁶⁵ As Internet gambling continues to expand in geography and popularity, more and more nations are realizing significant revenues from the growing industry. Hence, a global effort to work with the United States to completely cut off the biggest source of those revenues is not likely to happen.

60. For instance, courts have held that the Wire Act does not prohibit anything except for gambling on "sporting contests" via communication lines wholly preventing the Wire Act from affecting anything beyond sports betting. See *In re MasterCard Int'l Inc.*, Internet Gambling Litig., 132 F. Supp. 2d 468, 480-82 (D. La. 2001).

61. See Weinburg, *supra* note 55, at 306-07.

62. McBurney, *supra* note 24, at 352-54. By 1999, Antigua had set up a licensing program for Internet casinos and was content to reap the rewards of more than \$7.4 million in revenue. Schwartz, *supra* note 17, at 132.

63. Parmley, *supra* note 42, at E01.

64. PartyGaming, one of the largest Internet gambling operators, reportedly received eighty percent of its \$1 billion revenue in 2005 from the United States and this trend continued in 2006. McCarthy, *supra* note 5, at 18A.

65. See Pfanner, *supra* note 3, at 14; see, e.g., John Gray, *Texas Fold 'Em*, CANADIAN BUS., Oct. 9, 2006, at 44 (stating that Calvin Ayre, founder of Canadian Internet gambling site Bodog.com has no plans to stop doing business with United States customers); Richard Clough, *Virtual Casinos Brace for Big Hit: Gamblers Howl As Bill Awaits Enactment*, CHI. TRIB., Oct. 12, 2006 (stating Australian based gambling site Poker.com says it will not stop accepting bets from United States customers).

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II. ALL IN BLIND: THE UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT OF 2006

Believing Internet casinos were wrong for the United States, Congress had been attempting to remedy its prior enforcement problems since 1996.⁶⁶ However, until October 2006, none of those attempts became law.⁶⁷

The birth of the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) began on July 11, 2006, when the House of Representatives, despite resistance,⁶⁸ passed a federal bill entitled the Internet Gambling Prohibition and Enforcement Act.⁶⁹ After the Internet Gambling Prohibition and Enforcement Act passed decisively in the House,⁷⁰ the feeling was that the bill stood little chance of becoming law anytime soon because the Senate could not possibly have enough time to consider such an important and complex Act before recessing for mid-term elections.⁷¹ However, in a last minute move on September 30, 2006, Senator Bill Frist attached the UIGEA⁷² to the enormously popular and unrelated anti-terrorism Safe Port Act (SPA).⁷³ Because of the timing of the attachment, there was no time for full debate over the second tier matter of Internet gambling. The Senate nevertheless passed the SPA—with the

66. See *McBurney*, *supra* note 24, at 348.

67. See *Owens Jr.*, *supra* note 22, at 27-28 and *McBurney*, *supra* note 24, at 348-51, for a detailed discussion of such prior failed attempts.

68. Believing Congress did not yet know enough about the Internet casino industry, Representative Jon Porter proposed an alternative bill that called for an eighteen month study of Internet gambling by a federal commission. H.R. 5474, 109th Cong. (2006). However, such efforts did little to change the perception of those opposing Internet gambling, and Congress still refuses to adopt Porter's proposal. See 152 Cong. Rec. H8026 (daily ed. Sept. 29, 2006) (statement of Rep. Porter).

69. See 109 Bill Tracking H.R. 4411 (2006) (showing the amendment in the nature of a substitute, entitled the Unlawful Gambling Prohibition and Enforcement Act passed in the House on July 11, 2006). This bill is a combination of efforts from Representatives Robert Goodlatte of Virginia and Jim Leach of Iowa. *Parmley*, *supra* note 42, at E01

70. The bill passed by a vote of 317 to 93.

71. John Duckers, *Number's Not Up for 888 Gambling*, BIRMINGHAM POST (UK), Sept. 15, 2006, at 30.

72. The UIGEA is the Senate's amended version of the Internet Gambling Prohibition and Enforcement Act.

73. See *McCarthy*, *supra* note 5, at A18. The Safe Port Act is an anti-terrorism bill drafted to increase maritime and cargo security at domestic ports. H.R. 4954, 109th Cong. (2006).

UIGEA attached—just thirty-two minutes before adjourning for fall recess.⁷⁴

Less than two weeks later, President Bush signed the SPA into law simultaneously enacting the Unlawful Internet Gambling Enforcement Act of 2006.⁷⁵ The signing commenced a 270 day countdown in which the secretary and directors of the Federal Reserve System and the Attorney General have until summer of 2007 to come up with regulations enabling the successful prohibition of the transfer of money from within the United States to Internet casinos.⁷⁶

The focus and purpose of the UIGEA is to block the flow of money to Internet casinos by prohibiting banks and other financial institutions from transmitting funds from within the United States to such websites.⁷⁷ Specifically, the UIGEA directs the Secretary and the Board of Governors of the Federal Reserve System and the Attorney General to create and prescribe regulations requiring all domestic financial institutions “to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions.”⁷⁸ The UIGEA requires this blockade to come in one of two forms.⁷⁹

The first option is for the Federal Reserve System and the Attorney General to establish policies and procedures to identify and block restricted transactions through the use of codes found in authorized messages.⁸⁰ Thus, after receiving instruction on how to do so, all United States financial institutions will oversee all financial transactions within their control and must ensure customers are not sending funds to (or accepting funds from) Internet casinos. The second option is for the Federal Reserve

74. George F. Will, *Prohibition II: Good Grief*, NEWSWEEK, Oct. 23, 2006, at 78.

75. President Bush signed the UIGEA into law on October 13, 2006 commencing the 270 day countdown from that date. See Press Release, Cong. Press Releases, President Bush Enacts Leach Internet Gambling Law (Oct. 13, 2006).

76. See H.R. 4954.

77. See H.R. 4954; See also Kim, *supra* note 40, at C1.

78. H.R. 4954.

79. *Id.*

80. *Id.*

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System to establish policies and procedures that block the acceptance of designated products or services connected with a restricted transaction.⁸¹ Proponents of the UIGEA feel this will force financial institutions to create policies and procedures to identify and thereafter prevent the flow of money from domestic financial institutions to illegal Internet gambling sites.⁸² Thus, the burden falls on financial institutions, regardless of their size, to take measures to comply with government policies and procedures meant to ensure the identification of every transaction within their control.

The UIGEA cures previous problems of enforcement by defining or updating essential terms.⁸³ “Bet or wager” is now defined as “staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance.”⁸⁴ This revamped definition removes prior enforcement problems caused by courts limiting enforcement of Internet gambling to merely sports betting.⁸⁵ The new definition also appears to remove any doubt as to whether certain games considered games of skill, like poker, would find an escape from the prohibition’s reach.⁸⁶ The UIGEA defines “unlawful Internet gambling” as “plac[ing], receiv[ing], or otherwise knowingly transmit[ing] a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law.”⁸⁷

81. *Id.*

82. See Press Release, President Bush Enacts Leach Internet Gambling Law, Cong. Press Release (Oct. 13, 2006).

83. See H.R. 4954.

84. See *id.*

85. Cf. *In re MasterCard Int’l Inc., Internet Gambling Litig.*, 132 F. Supp. 2d 468, 480-82 (D. La. 2001).

86. Under the original bill, as proposed and passed in the House, the definition of “bet or wager” included the phrase “predominantly subject to chance.” This gave hope to proponents of online poker since they, with backing from court decisions, considered poker more a game of skill than chance. However, with the final wording set as it is in the UIGEA, it appears to make no difference how much chance is involved when determining if the activity falls within the scope of the term “bet or wager.” This is because any presence of chance brings the activity under this umbrella term. See 152 Cong. Rec. H4978 at H4980.

87. H.R. 4954.

However, the UIGEA expressly excludes intrastate Internet bets where a state expressly authorizes a type of bet or wager and the method used to place the bet or wager.⁸⁸ The UIGEA permits such bets as long as the state regulations include “age and location verification”⁸⁹ and appropriate security standards to “prevent unauthorized access by any person whose age and current location has not been verified.”⁹⁰ A similar type of exception exists for bets or wagers made within lands of a single Indian tribe and even between two or more Indian tribes. The UIGEA permits such wagers as long as the bet complies with Indian gaming laws and there are regulations equal to those demanded for intrastate wagers as discussed above.⁹¹

Finally, the UIGEA makes an explicit statement that unlawful Internet gambling “shall not include any activity that is allowed under the Interstate Horseracing Act of 1978.”⁹² This exception continues, “[i]t is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law.”⁹³ This exception has led to confusion domestically⁹⁴ and may cause serious future problems internationally.⁹⁵

Regardless of any loopholes or exceptions, the UIGEA is now United States law. The mere signing of the UIGEA has already substantially curbed online gambling in the United States and spawned a strong reaction from one of the United States closest allies, the United Kingdom.⁹⁶ Currently, the

88. *Id.*

89. Designed to “block access to minors and persons located out of such State.” *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *See* Kim, *supra* note 40, at C1.

95. *See* 152 Cong. Rec. H8026 (daily ed. Sept. 29, 2006) (statement of Rep. Porter that “[c]urrent inconsistencies in U.S. Internet gambling policy could lead to sanctions by the World Trade Organization.”); *see also* Pfanner, *supra* note 3, at 14 (explaining that British officials will try to “engage with” international institutions like the World Trade Organization to try and legalize and regulate online gambling with a focus on these loopholes in the United States law).

96. While the United States has been trying to extricate Internet gambling, the United Kingdom is progressively working on plans to accept and tax Internet casinos in order to benefit from being the first large Western country

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United Kingdom is home to some of the largest and most respected Internet betting companies in the world.⁹⁷ Many of these companies have now shut their virtual doors on United States customers, thus leaving most Americans with no place to play and these companies without their largest source of revenue.⁹⁸

But while most large and reputable British-based websites close their doors on billions of American dollars, other gaming sites have explicitly stated they will not stop accepting bets from the United States.⁹⁹ Further, in reaction to the UIGEA, the British government held a conference on October 31, 2006, with delegates of over thirty countries to discuss how to sufficiently legalize and regulate the industry on a global level.¹⁰⁰ Again, having no interest in learning about the industry that it so adamantly opposes, the United States government declined to join the conference.¹⁰¹ Because of the United States' refusal to cooperate, rumors are beginning to circulate that the United Kingdom may follow Antigua's lead and challenge the United States in front of the World Trade Organization.¹⁰² As for now, the Internet gambling world and United States consumers must wait to see how and if the latest hurdle for Internet gambling will play its hand.

to explicitly allow private-operators to set up virtual casinos on its soil. *See* Pfanner, *supra* note 3, at 14. Since passage of the UIGEA, the London Stock exchange has seen publicly traded online gambling stocks fall in the amount of \$7.1 billion in value. *See* Kim, *supra* note 40, at C1.

97. Such as PartyGaming, 888.com, and Sportingbet. *See* Kim, *supra* note 40, at C1.

98. *See* Kim, *supra* note 40, at C1 (stating PartyGaming, 888.com, and Sportingbet said they will stop accepting bets from the United States).

99. Australian based gambling website Poker.com says the Act will "have little or no effect on its U.S. operations. Clough, *supra* note 65. The company said "[w]e will not be stopping U.S.-based players from playing at Poker.com and all player account balances are 100 percent safe and will always be readily accessible." *Id.*

100. *See* Pfanner, *supra* note 3, at 14.

101. *See* Emling, *supra* note 3, at 1F.

102. *See* Pfanner, *supra* note 3, at 14.

III. HOLDING “THE NUTS”: WHY STATE CHOICE IS A STRONGER HAND THAN BLANKET PROHIBITION

A. Calling a Bluff: Glaring Loopholes in the UIGEA

The stated aim of UIGEA is to completely cut off the flow of money from the United States to Internet casinos. However, the UIGEA contains glaring loopholes that will likely prevent this from happening. The first of these involves offshore third party payment processors. While the wording of the UIGEA prohibits financial institutions located within the United States from transferring funds to Internet casinos, it makes no mention of transfers to or from third party payment processors.¹⁰³ While the question remains whether the United States will attempt to regulate such websites in the future, the fact is, the UIGEA does not explicitly cover the transferring of money to third party payment processors at this time.¹⁰⁴

Thus, these third party payment processing sites appear to fall outside the blockade created by the UIGEA. If left as such, United States consumers could effortlessly transfer funds to offshore payment processors and thereafter direct these sites to then deposit funds into an Internet casino. Identical methods have been in practice for many years. When various domestic banks and credit card companies announced they would no longer permit customers to send money directly to foreign Internet casinos,¹⁰⁵ offshore third party payment processors such as Neteller and FirePay sprang up to fill the demand.¹⁰⁶ The availability of these sites has¹⁰⁷ provided (and likely will continue to provide) a feasible alternative route for depositing funds into Internet casinos. This is because history has shown that trying to enforce domestic laws on foreign website operators is virtually impossible.¹⁰⁸

Even assuming the United States could pass additional legislation, or even use the UIGEA to block the flow of money

103. Kim, *supra* note 40, at C1; see H.R. 4954, 109th Cong. (2006).

104. Kim, *supra* note 40, at C1; see H.R. 4954.

105. Kim, *supra* note 40, at C1.

106. *Id.*

107. As evidenced by the fact that United States consumers make up over fifty percent of the Internet gambling market. See McCarthy, *supra* note 5, at 18A.

108. See Gray, *supra* note 65, at 44

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to these third party payment processors, some new form of money transferring would surely be close to follow.¹⁰⁹ For instance, if the federal government prohibits domestic banks from allowing customers to transfer money to these third party payment processors, the next step for consumers is to open accounts with foreign banks and transfer money there.¹¹⁰ Just as with third party payment processors, a United States gambler could then instruct this “out-of-jurisdiction” financial institution to thereafter transfer such funds into an Internet casino.

A second loophole is present for non-electronic money transfers. Ultimately, American gamblers could return to the old way of sending money and transfer funds overseas through the use of paper checks.¹¹¹ While wire transfers and credit cards use traceable transaction codes, paper checks do not.¹¹² Therefore, a consumer could simply mail a paper check to an Internet casino or other third party payment processor. In so doing, there would be no electronic transfer to prohibit and the United States gambler could therefore ensure he will have funds to gamble with. While the Internet casino may know the money is coming from the United States, not all sites are willing to comply with the blockade.¹¹³ Thus, there will likely always be websites willing to accept and pay out funds through paper checks and similar activity that appears to fall outside the reach of the UIGEA.¹¹⁴ Ultimately, the undeniable demand for Internet gambling will cause gamblers to find a way to get money to offshore Internet casinos regardless of what the United States attempts to prohibit.

*B. A Shift in Pot Odds: When Laws Deem a Service Criminal,
Only Criminals Are Left to Provide That Service*

Once American gamblers figure out how to circumvent the UIGEA’s blockade on the transfer of money, it will be up to the Internet casino whether to accept such funds. This creates a

109. For a discussion on other possible forms of financing for Internet gambling, see Weinburg, *supra* note 55, at 298-300.

110. See Gray, *supra* note 65, at 44.

111. *Id.*

112. *Id.*

113. See Clough, *supra* note 65.

114. See *id.* (presenting thoughts of Nelson Rose, law professor and Internet gambling expert at Whittier Law School).

situation leaving American gamblers more vulnerable than ever before. The UIGEA has recently forced many of the most reputable Internet gambling services to close their doors to American gamblers. British-based PartyGaming, 888.com, and Sportingbet, along with other European online gambling outfits,¹¹⁵ said they will comply with the United States prohibition and stop taking bets from within the United States.¹¹⁶ Such adherence appears to be an outstanding victory for proponents of Internet gambling prohibition and evidences a message sent throughout the world that Internet gambling is illegal in the United States. However, upon closer inspection, with an eye toward the history of prohibitive efforts in the United States, it is easy to see how pressuring large, reputable, and regulated sites to turn away America's demand for Internet casinos may end up making things worse by forcing American gamblers to turn to unregulated and unsafe sites.

Throughout this debate, opponents of Internet gambling have focused on the potential for money laundering, the potential to fund terrorism and drug dealers, the threat of unfair play and corruption, the danger to children, and the danger to gambling addicts as the main reasons why the federal government must keep Internet gambling out of the United States.¹¹⁷ Congress created and passed the UIGEA to stop these very problems. However, the only sites that are complying with the United States' stance on Internet gambling are the same sites that are most protective against such problems.¹¹⁸ Thus, the UIGEA has enhanced the very same problems Congress intended it to thwart.

The majority of the complying sites are publicly traded firms heavily regulated by the British government to ensure that the very demons the United States claim plague the industry are exorcized. There are over 2,500 online casinos throughout the

115. London-based Fairground Gaming said it is suspending its U.S. operations to offset significant losses that it expects to incur. Dublin-based FireOne said it is restructuring its operations to exclude the United States as it awaits the Act's passage. Clough, *supra* note 65

116. Kim, *supra* note 40, at C1.

117. 152 Cong. Rec. H4978 at H4986-87 (statement of Rep. Bachus); *see also* Jonathan Weisman, *Internet Gambling, Port Deals Reached*, WASH. POST, Sept. 30, 2006, at A8.

118. Kim, *supra* note 40, at C1.

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world.¹¹⁹ Not all of them are going to shut down, and not all of them are going to listen to or care what the United States thinks about Internet gambling.¹²⁰ Consequently, the common thought of opponents to the UIGEA is that only legitimate sites, such as those regulated by British law, will be hurt by the UIGEA; players will then be forced to use smaller, privately held operators that are beyond the watchful eyes of regulation.¹²¹ Additionally, with the larger regulated Internet casinos leaving the United States market, domestic consumers demanding online action will turn to the very sites, if any, that facilitate money laundering while funding terrorism and drug dealers. These non-regulated sites are the same sites that do not have adequate resources to instill protective measures to keep children away or to offer assistance to problem gamblers.¹²² Therefore, the United States' attempt at overall prohibition will likely leave players open to more fraudulent operators than ever before.¹²³

With the latest form of prohibition now in place and enforcement of that prohibition coming soon, it appears to be a safe bet that past users of these reputable and regulated Internet casinos will be forced to explore other gambling options. The fear is that this will come in the form of smaller, non-regulated, and possibly fraudulent Internet sites. As this occurs, the very problems that bluffed United States lawmakers into passing the UIGEA will only worsen because the very sites that have worked to weed out these problems are now off limits.

C. A Bad Beat: Problems with Forcing Financial Institutions to Regulate the Industry

As previously discussed, the UIGEA requires the Attorney General and directors of the Federal Reserve System to prescribe regulations forcing all United States financial

119. Puzzanghera, *supra* note 41, at 10.

120. See Clough, *supra* note 65.

121. 152 Cong. Rec. H8026 (daily ed. Sept. 29, 2006) (statement of Rep. Paul that the UIGEA will ultimately increase organized crime's ability to control and profit from Internet gambling); see McCarthy, *supra* note 5, at 18A; Kim, *supra* note 40, at C1.

122. See Kim, *supra* note 40, at C1.

123. A statement made by Linda Goldstein, a partner with Manatt, Phelps & Phillips LLP. McCarthy, *supra* note 5, at 18A.

institutions to “identify and block or otherwise prevent or prohibit” financial transactions relating to unlawful Internet gambling.¹²⁴ The problem is, once such regulations are in place, the burden of enforcement shifts from the government to each respective financial institution. Consequently, to ensure compliance with governmental regulations, every category of financial institution must appropriate time and money to monitor every financial transaction occurring under its control.

Such responsibility is sure to put an enormous burden on United States financial institutions.¹²⁵ Although currently it is unknown what the actual regulations will be, as one commentator notes, “[t]rying to sort out which payments they can accept and which they must reject will be a cumbersome—and expensive—enterprise.”¹²⁶ Such burden and expense may not be a problem for large companies such as Bank of America or American Express, but forcing smaller startup banks, credit companies, credit unions, and fund transferring businesses to comply with sufficient monitoring of all financial transactions may quickly force such companies out of business. Think of local banks and credit unions in some of the smaller cities around the United States. These institutions tend to be smaller, sometimes non-profit entities that help the community by providing higher interest rates, yet they do not have the funds, technological resources, or personnel to successfully monitor what their customers are spending their money on. Hence, this heavy burden may force such helpful services to shutdown or face severe penalties from the Federal Functional Regulators or the Federal Trade Commission.¹²⁷

Even assuming United States financial institutions have the resources and money to comply with the new federal regulations, a question arises about what effect such “monitoring” of every transaction will have on the efficiency of the flow of money. This “monitoring” could significantly delay the flow of money

124. H.R. 4954, 109th Cong. (2006).

125. Representative Shelley Berkley of Nevada claims the Act violates privacy rights because it brings the federal government into the home of people that choose to gamble online. Brian DeBose, *House Curbs Online Gambling: Bill Extends Interstate Ban to the Internet*, WASH. TIMES, July 12, 2006, at A11.

126. Jonathan Braude, *Stacked Deck?*, THEDEAL NEWSWEEKLY, Oct. 10, 2006.

127. See H.R. 4954.

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within the United States and needlessly overburden those who have been accustomed to the speed and efficiency of online banking. Additionally, delays in the flow of money could have serious effects on the growing Internet stock market, or e-trade, industry. In the stock market, time-consuming delays can result in major losses for investors. Thus, any delay in the flow of money between these sites and the market could have serious consequences on individual traders and the e-trade business as a whole.

D. Buy In or Cash Out: A Proposed Solution for Access to Internet Casinos

The first part of this proposal adopts the policies of the IHA allowing individual states to choose whether to allow Internet gambling within their respective borders. Pro Internet gambling states can mirror current regulations for interstate horse racing to ensure online gamblers and Internet casinos comply with an individual state's choice on legalization. The proposal concludes with a look into how allowing state choice will transfer the burden of regulation of financial institutions to the actual market participants.

As discussed,¹²⁸ under the UIGEA the definition of unlawful Internet gambling has built in exceptions for intrastate Internet gambling, intra and intertribal Internet gambling, and for activity under the IHA.¹²⁹ Such wording allows the states to individually permit and even promote Internet casinos, but only if the betting action is contained within the borders of that state. Therefore, under the UIGEA, if Nevada and California each legalize Internet casinos, residents of those states may place bets online to Internet casinos in their respective state. However, the expected provisions stemming from the UIGEA would block any attempts by a California resident to make a bet to a Nevada Internet casino or by a Nevada resident to make a wager to a California Internet casino even if the type of wagering activity is explicitly legal in both states. There is simply no rational basis for this when the laws of both states are in accord. Sufficiently regulated Internet casinos will protect users the same way, whether in California or Nevada.

128. See *supra* Part II.

129. 15 U.S.C. §§ 3001-3007 (2005).

In comparison, the IHA permits interstate bets via phone or “other electronic media” as long as the bet is “lawful in each State involved.”¹³⁰ Thus, under the IHA, the California resident above can lawfully place a bet or wager via the Internet to a horse racing track in Nevada.¹³¹ There is no rational basis for such a difference and Congress has made no attempt to provide one. One idea is that Congress does not yet know enough about Internet casinos.¹³² Another is that the horse racing industry is a powerful interest that provides lucrative results for state officials.¹³³ In any event, the glaring contradictions of these two acts are painfully obvious. The United States could learn a lot about how to handle Internet casinos if it would look at its own laws and findings regarding horse racing.

Simply put, individual states should choose whether to allow Internet gambling within their respective borders. Upon creation of the IHA, Congress expressed that this was the best solution.¹³⁴ The first finding under the IHA states, “Congress finds that . . . the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders.”¹³⁵ In fact, as discussed above, before Internet casinos, the states had the final choice over what forms of gambling they would permit within their borders. The federal government should not change this long running standard simply because it does not understand Internet gambling. Even under the UIGEA, individual states can choose to allow Internet gambling, but only if the gambling remains within state borders.¹³⁶ By removing the blanket prohibition on all interstate Internet casino gambling, Congress could reinstate the freedom of choice that has always been given to the states and allow individual states to choose to promote, permit, and regulate Internet casinos and profit accordingly.

Once Congress permits states to choose their own stance on

130. 15 U.S.C. § 3002.

131. Under 15 U.S.C. § 3004 there are certain consent requirements for cooperation between tracks of different states that are beyond the scope of this proposal, so they will not be outlined in detail here.

132. See Tony Batt, *Porter to Visit England to Study Internet Gambling Regulations*, LAS VEGAS REV. J., Aug. 4, 2006, at E01.

133. See Will, *supra* note 74, at 78.

134. See 15 U.S.C. § 3001.

135. *Id.*

136. See H.R. 4954, 109th Cong. (2006).

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Internet casinos, the issue becomes how to regulate who is using these sites. Individual states are capable of developing screening measures respecting another state's regulatory standards concerning Internet gambling. Under the UIGEA, intrastate, intratribal, and intertribal Internet gambling is lawful when done under state and Tribal regulations as long as those regulations include "age and location verification requirements reasonably designed to block access to minors and persons located out of such State" and "appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified."¹³⁷ Under the UIGEA, a state choosing to legalize Internet casinos must implement these screening measures to ensure a state's Internet casino only takes bets from residents of that same state. Thus, it is up to the Nevada Internet casino site to impose a sufficient screening process to verify users are of legal age and to keep California residents out. The United States can use this same idea for interstate screening measures.

Such screening measures currently work in the field of Internet horse race wagering, and domestic casinos have previously proven them effective for Internet casinos. In 2001, Harrah's Entertainment, MGM Mirage, and Park Place Entertainment became interested in Internet gambling and set up their own privately run Internet casinos as an experimental probe into the industry.¹³⁸ At that time, these experimental sites did not accept cash bets.¹³⁹ MGM Mirage then took it a step further and set up a fully functional offshore Internet casino that did accept cash wagers.¹⁴⁰ However, to avoid possible conflicts with the federal government, the new casino utilized a stringent registration process to ensure the site did not accept bets or wagers from within the United States.¹⁴¹ Although this experiment did not work financially because of the lengthy screening processes and lack of United States revenue, it did work in theory to illustrate that it is possible to implement sufficient screening regulations on Internet gambling sites.¹⁴²

137. *Id.*

138. *See* McBurney, *supra* note 24, at 348

139. *Id.*

140. Berton, *supra* note 37, at A1.

141. Parmley, *supra* note 42, at E01.

142. *See* Berton, *supra* note 37, at A1.

When the choice of whether to legalize Internet gambling resides with individual states, some states can and will choose to still prohibit Internet gambling in all forms. Using the same regulation requirements discussed above,¹⁴³ Internet casinos in the states that allow Internet gambling would be required to set up a screening process to verify all player ages and location. Internet casino sites could sufficiently comply with such requirements through the use of credit checks, by verifying the location of the bank account or credit account used to fund the players account, and by requiring a valid mailing address for all players. Thus, the Nevada Internet casino would be required under Nevada law to set up a screening process to ensure all users are of legal age and that the hypothetical California player is actually located in California. Concurrently, this would also ensure that a player from Utah, where Internet gambling is likely to remain unlawful,¹⁴⁴ will not be able to place a bet or wager. This regulation eliminates the fear that minors will have access to such sites and that the Internet casino wave will invade anti-gambling states.

This proposal removes the heavy burden the UIGEA places on financial institutions and puts it squarely on active Internet casinos and states profiting from them. The Internet casinos are voluntary market participants in a position to make a profit under this proposal, so they should be the ones responsible for regulation. Individual states would require each Internet casino to have sufficient age and location verification along with helpful resources for problem gamblers. Therefore, instead of financial institutions examining every transaction in an effort to determine where it is going and for what reason, the only transactions monitored would be the ones coming directly into the Internet casino. Likewise, the only entity required to monitor such transactions would be that same Internet casino receiving the transaction. This would effectively remove the unnecessary burden of monitoring every financial transaction processed by individual financial institutions who gain nothing from such monitoring. Further, this would remove invasion of privacy issues because the only transactions monitored by the Internet casinos are those that users purposely send to them.

143. For age and location verification.

144. Based on the fact that Utah is one of only two states that prohibit gambling in all its forms.

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With Internet casinos in charge of the screening process and therefore held responsible for upholding the respective Internet gambling stance of each individual state, Internet gambling could become an enormous revenue source for participating states. According to a study by the Poker Players Alliance, participating states could raise \$3.1 billion in annual tax revenue by permitting, regulating, and taxing Internet gambling sites.¹⁴⁵ As of now, this money is leaving the United States and heading elsewhere. By allowing states to choose how they want to approach Internet gambling, this proposal allows states that opt to host Internet casinos to corral this money and put it toward easing taxes, funding education, rebuilding communities, and other general improvements to the state as is done with traditional gambling revenues.¹⁴⁶

In addition, keeping Internet casinos under United States jurisdiction will make Congress' worries about terrorist funding, money laundering, and the facilitation of drug dealers disappear. The first likely domestic participants in this emerging market are previously established and respected "brick-and-mortar" casinos. With already heavily regulated companies such as Harrah's, Park Place Entertainment, and MGM creating, regulating, and being held accountable for Internet casinos, any real threat of money laundering or terrorist and drug dealer funding will be significantly lessened. Federal and state governments already keep a watchful eye over these companies' operations to ensure they provide lawful operations free from corruption or ulterior motives. Under this proposal, the same agencies that are currently in charge of monitoring "brick-and-mortar" casinos would simply expand their watchful eye and regulate new Internet enterprises.

Further, by embracing the industry, the United States would no longer find itself at odds with numerous countries around the world, including the United Kingdom. The United Kingdom has always hoped the United States would abandon its prohibitive stance on Internet gambling and simply regulate and tax the industry.¹⁴⁷ Once the United States agrees to do this, it should

145. See Berton, *supra* note 37, at A1.

146. See *supra* text accompanying note 26.

147. See Marcus Armytage, *Bookmakers Wary Over Web Tangle*, DAILY TELEGRAPH (U.K.), Sept. 18, 2006, at 29.

be more open to work with the United Kingdom and other countries in the British led effort to legitimize and regulate the industry on a global level. Cooperation will avoid any problems the United States may face in front of the World Trade Organization and will facilitate the removal of all the fears Congress has about the Internet gambling industry. With a global regulation system in place, those sites that do not adhere to standard regulatory requirements will cease to operate. Such global watch will make it so that even in states where Internet gambling is explicitly legal, children will not have access to any Internet gambling sites, either domestically or internationally. Likewise, working together for global regulation will remove threats of corruption, terrorism, and drug funding, in addition to unfair play because no site will go unmonitored.

With the threat of underage gambling controlled, the interests of individual states protected, resources for problem gamblers set up, and fears of corruption and unlawful funding of terrorism, drugs, and money laundering eliminated, the only concern left is the state's fear that the rise of Internet gambling will directly affect their revenues. However, studies have shown that this will not be a problem. In addition to the enormous revenue potential each state has by opening its own Internet casino, it is no secret that Internet casinos have been open to Americans for the past decade and casinos have yet to feel any ill effects.¹⁴⁸ In fact, online gamblers actually visit regular casinos more often than the average American.¹⁴⁹ Many players wanting to learn casino games use Internet games to learn how to play.¹⁵⁰ Online, players can learn how to play for nickels, dimes, or quarters instead of having to spend big money at casinos.¹⁵¹ The excitement of playing online seems to "whet the appetites of millions for the real casino experience."¹⁵²

CONCLUSION

Without truly studying the industry that the UIGEA attacks, Congress has taken a position directly adverse to its

148. See Puzzaghera, *supra* note 41, at 10.

149. *Id.*

150. Kim, *supra* note 40, at C1.

151. *Id.*

152. Will, *supra* note 74, at 78.

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largest ally, the United Kingdom. With a seeming disregard for the efforts of other countries to regulate the industry on a world-wide scale, Congress has initiated another futile prohibition upon the “land of the free.”

Besides taking away United States citizens’ freedom to spend their money, the UIGEA puts an enormous, unnecessary burden on domestic financial institutions, a burden that Congress can easily avoid. In addition, the trend throughout history is that prohibition of a high demand product will only lead consumers to find alternative ways of getting that product. Because the UIGEA ensures that no domestic company will be able to successfully enter the market and that most legitimate offshore sites will close their virtual doors to Americans, the only places left for Americans to turn are unregulated, unsafe, and untrustworthy gambling sites.

Internet gambling is a hefty and ever increasing world-wide revenue generating industry. It provides great potential for individual states to gain additional tax revenues from Americans and the rest of the world alike. Although Congress once said gambling regulation is an activity the states should predominately handle, it has now abandoned that position without good reason. Due to the nature of the Internet, Internet gambling is here to stay. The Federal government needs to accept this fact and parallel the prior decisions it made for interstate horse racing. The United States should allow individual states to create their own laws concerning Internet casinos and those states should have the freedom to run interstate operations with other similarly situated states. Such an allowance would shift any burden of regulation to the companies actually making money from the industry and further allow willing states to benefit financially from a growing market. This proposal, combined with international efforts to regulate the Internet gaming industry on a global level, will ensure the protection of consumers.

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