

OFFICE OF MANAGEMENT AND BUDGET

Internet Gambling

Transmission Number (202) 395-3109
Verification Number (202) 395-3454

TO: Mary Smith, Michael O'Leary

AGENCY: _____

PHONE: _____

FROM: Jim Brown/395-3473 _____

Richard Green/395-4607 _____ Leticia Sierra/395-3589 _____

Micheal Hunter/395-3459 _____ Jeffrey Weinberg/395-3457 _____

Ron Jones/395-3386 X

Legislative Reference Division/RM: 7218
Economics, Science, & General Government Branch (ESGG)

NUMBER OF PAGES(not including this cover sheet): _____

Date: _____ Time: _____

Comments/Subject: Treasury letter Objector is
Do I Internet Gambling and

LRM ID: REJ132

SUBJECT: JUSTICE Draft Bill on Internet Gambling Prohibition Act

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concurring comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-2109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 7/23/99 3:30 (Date)
Row Cox (Name)
TRON (Agency)
622-1147 (Telephone)

*Row 2+3,
pgs
just -
care*

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur

☐ No Objection

☐ No Comment

☐ See proposed edits on pages _____

☒ Other: OBJECT

☒ FAX RETURN of 6 pages, attached to this response sheet

Re:
Attached are comments from our Eco Policy folks. Also attached are two memos to DPC from the Eco Policy folks.

Finally, the Eco Policy folks asked Mary Smith at DPC to set up a meeting with DOJ on the subject given the substantive concerns with DOJ's approach.

Re

MEMORANDUM FOR RONALD LEVY

Office of the Associate General Counsel

From

ECONOMIC POLICY

Subject

Justice Draft Bill on Internet Gambling Prohibition Act

Thank you for the opportunity to comment on the Justice Draft Bill on The Internet Gambling Prohibition Act. The bill represents an important effort in updating laws governing the use of communication facilities for purposes of gambling. However, there are a number of issues that should be reviewed with the current DOJ approach.

- First, the proposal's treatment of Internet Service Providers and web developers who assist gambling related sites is vague. The bill defines "information assisting in the placing of bets or wagers" as "information knowingly transmitted by an individual in the business of betting or wagering" for use in placing receiving or otherwise enabling or facilitating a bet or wager that violates the applicable federal, state, tribal or local law". The concept of in the business of betting or wagering is not defined. Presumably web developers or Internet Service Providers who are employees of the gambling web site are in the business of betting or wagering. However, the gambling firm can contract with external web developers or Internet Service Providers. Under what circumstances, if any, would these outside firms be in the business of betting or wagering?

News reports of recent indictments of Internet Gambling operations point out that one of the indictments was identified solely as the Internet Service Provider for Winner's Way Casino.¹ The authors of this article speculate that the government is taking the position that "a person or entity providing a betting operation with Internet access is "engaged in the business of betting or wagering" for Sec. 1084 purposes." This broad interpretation of the law poses a substantial threat to ISPs having little direct contact with betting operations. The Administration needs to carefully consider whether they want such broad legislation.

- Second, the current proposal is likely to be ineffective and may create diplomatic problems. Internet gambling sites can always locate overseas. The proposal asks foreign countries to assist in prosecuting foreign Internet gambling firms that engage in wagers with American citizens. Under the DOJ approach, we must ask for foreign assistance even though the American citizen who gambles is not subject to federal prosecution unless he or she is in the business of wagering and betting.
- Third, the proposal does not consider less burdensome methods of slowing the growth of Internet gambling. It should be possible to significantly control the growth of Internet gambling by prohibiting the use of credit card transactions with Internet

¹ Internet Law, The National Tax Journal, Kenneth A. Freeling and Ronald F. Wiggins, March 30, 1998.

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gambling sites. Credit card companies are involved in litigation with individuals who are seeking to repudiate credit card debt from Internet gambling. A regulation of this type would protect credit card companies from future litigation. Moreover, it could solve the international issues by prohibiting the credit card companies from accepting credit card debt for internet gambling irrelevant of the location of the site.

- Fourth, the proposal does not advance the Administration's position on the Indian Gaming and Regulatory Act (IGRA). It is insufficient for the Administration to simply clarify that section 1084 does not amend or repeal IGRA, when IGRA has been effectively neutralized by the courts and the unwillingness of some states to negotiate in good faith. It is unclear from my reading of this statute if Indian tribes could offer Internet lotteries. This proposal needs to clarify the types of products that could be offered by Indian tribes through the Internet.

Current law on use of communication facilities for gambling does need to be updated given the sharp rate of technological change. However, the DOJ measure has a number of shortcomings. It appears to create potential legal problems for Internet Service Providers and web developers. It does not consider regulatory approaches such as restrictions on credit card transactions that would be less burdensome to the growth of e-commerce related gambling. It does not have an effective approach to controlling offshore Internet gambling. It does not resolve problems associated with the growth of the Internet and the breakdown of IGRA. (Please see the attached memos to the DPC).

Economic Policy does not support the present DOJ bill on Internet gambling in this form.

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July 21, 1999

MEMORANDUM FOR MARY SMITH

Domestic Policy Council

From: Lynda de la Viña
Deputy Assistant Secretary
for Economic Policy Coordination

Subject: MasterCard and Visa litigation and potential impacts on
Internet Gambling and E-commerce

New litigation against credit card companies that facilitate transactions with Internet Gambling sites has potentially important ramifications for the Administration's policies on Internet Gambling, E-Commerce and Bankruptcy. This memo discusses issues related to this litigation.

There has been litigation in California, Wisconsin, and Alabama related to credit card debts incurred on the Internet. The California case (Provident National Bank v. Haines)¹ has recently been settled by Master Card. As a basis of this lawsuit, MasterCard has agreed to a monetary settlement and has imposed restrictions on Internet casino merchants. These restrictions include:

- ◆ a requirement that Internet casino merchants post a notice that Internet gambling may not be lawful in certain jurisdictions;
- ◆ a requirement that Internet casino merchants ask prospective gamblers to provide the state or country in which they reside; and
- ◆ a requirement that Internet casinos provide information that would allow credit card issuers to code the nature of the transaction.

The blueprint offered by the settlement in this case would allow MasterCard to continue to enter into relationships with offshore gambling entities even though the DOJ is currently prosecuting Internet gambling cases.

In a class-action lawsuit in Wisconsin, a UW-Madison student claims that MasterCard and MBNA America Bank are illegally facilitating Internet Gambling.² The

¹ See "MasterCard Sets New Rules For Online Gambling To Settle Lawsuit," AP Press Wire, July 13, 1999.

² Segall, Cary, "Credit Cards Sued on Gambling," Madison Newspapers, Inc., Wisconsin State Journal, April 22, 1999.

4

lawsuit alleges that credit card companies know these transactions are criminal. The lawsuit asks for refunds with interest of all money collected from gamblers and triple damages based on Federal racketeering laws. The plaintiff's lawyer claims that any debt from an illegal gambling transaction is unenforceable. The same law firm has filed five cases of this type in Alabama.

This litigation has important implications for the Treasury and for the Administration.

- ◆ Financial exposure to banks from repudiation of Internet Gambling debts is relatively small at this time, but this problem could grow if Internet Gambling becomes more popular.
- ◆ When debt repudiation or bankruptcy occurs, illegal gambling losses on credit cards are passed along to other consumers. The moral argument for bankruptcy reform is reduced when credit card companies and banks enter illegal, risky transactions, which drive up costs to their customers who don't default.
- ◆ The private lawsuits benefit individuals who gamble on the Internet rather than other consumers who must pay higher debt costs because of Internet gambling. The litigation also allows credit card companies to keep the fees received from the illegal Internet gambling operation.
- ◆ It is likely that Internet gambling cannot succeed without access to credit card transactions. Inhibiting the growth of Internet gambling through credit card companies may be less burdensome to growth of e-commerce than proposed regulations on Internet Service Providers.

cc: D. Wilcox
D. Bernstein

July 21, 1999

MEMORANDUM FOR MARY SMITH
Domestic Policy Council

FROM: Lynda Y. de la Viña
Deputy Assistant Secretary
for Economic Policy Coordination

SUBJECT: Federal approaches to the Control of Internet Gambling

Two approaches to the control of Internet gambling are currently being discussed. The first approach involves use of the 1961 Wireline Act, the law the Department of Justice currently uses to prosecute Internet gamblers. The second approach, a broader prohibition against Internet gambling, is currently being considered in a bill proposed by Senator Kyl of Arizona. It is our current assessment that neither existing law or the broader prohibitions proposed by Senator Kyl, can effectively stop the growth of Internet gambling. Private litigation aimed at preventing credit card companies from collecting illegal gambling related debts might have a larger impact than the current proposals.

Existing DOJ Policy: In 1998, the Department of Justice announced indictments of 14 individuals who owned or managed Internet Gambling operations. The individuals were indicted under a 1961 Wireline law that prohibited the placement of bets through a wire communication facility. This law has several limitations:

- ◆ The defendant must be in the business of betting and wagering. This includes professional gamblers, but does not include casual gamblers.
- ◆ The bets and wagers must be transmitted by "wire communication." Wire communication generally means telephone, but is defined and can be interpreted more broadly. It is not clear whether wire communications pertain to satellite transmissions or the Internet.
- ◆ The law does not pertain to bets outside this country. It may be difficult to prosecute owners and managers of Internet gambling sites if the managers do not know where bets originate.

There is currently substantial uncertainty about DOJ's intentions with regard to prosecutions of Internet Gambling under the Wireline statute. The statute does not define the responsibility of Internet Service Providers. One person in the recent indictment was identified as the Internet Provider for "Winners Way Casino." DOJ may be taking the position that an ISP that provides a web site owner with access to the Internet is in the

6

business of betting or wagering. This interpretation has substantial implications for e-commerce.

The Kyl bill: A bill introduced by Senator Kyl of Arizona takes a much broader approach to the regulation of Internet gambling. This bill has 22 cosponsors and has passed the Senate Judiciary Committee by a vote of 16 to 1. The provisions of the Kyl bill:

- ◆ Make Internet gambling illegal for all individuals, not just individuals in a gambling business.
- ◆ Make individuals in a gambling business who participate in Internet gambling subject to a \$20,000 fine and four years in jail.
- ◆ Allow United States law enforcement agencies to get court orders that would force Internet Service Providers to deny access to gambling sites and to cooperate with Federal subpoenas.
- ◆ Provides exemptions for fantasy sports and the horse racing industry. (Operators of Jai Lai are asking for similar exemptions.)

This brief review of proposals that address the issue of Internet gambling, however, raises some further questions.

- ◆ It appears that existing law governing Internet gambling is constrained and insufficient in dealing with the technology related to internet gambling.
- ◆ The potential legal responsibilities of Internet Service Providers who assist gambling related sites is not clearly established under current laws and that the approach in the Kyl bill may be burdensome to small Internet Service Providers.
- ◆ It is not clear that gambling can technologically be banned from the Internet. Some experts believe that Internet gambling operations will be able to obtain service from offshore Internet Service Providers or could simply alternate among domestic Internet Service Providers.¹

It may be possible to limit the growth of Internet gambling by preventing credit card companies from processing Internet gambling transactions. There have been some private lawsuits over Internet gambling transactions (see my memo on potential impacts of credit card litigation) but there has been no Federal oversight or litigation in this area.

CC: D. Wilcox
D. Bernstein

¹ See "Internet Gambling Hard to Police," The Charleston Gazette, May 12, 1999.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, July 19, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: *Richard E. Green*
OMB CONTACT: Richard E. Green (for) Assistant Director for Legislative Reference
Ronald E. Jones
E-Mail: Ronald_E._Jones@omb.eop.gov
PHONE: (202)395-3386 FAX: (202)395-3109
SUBJECT: JUSTICE Draft Bill on Internet Gambling Prohibition Act
DEADLINE: 5:30 PM today Monday, July 19, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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TEXT

Section 1081 of title 18, United States Code, is amended

(1) in paragraph (5), as so designated --

- (A) by striking "wire communication" and inserting "communication";**
- (B) by inserting "satellite, microwave" after "cable" and before "or"; and**
- (C) by inserting "(whether fixed or mobile)" after "connection" and before "between".**

(2) by adding at the end the following terms:

The term "information assisting in the placing of bets or wagers" means information knowingly transmitted by an individual in the business of betting or wagering for use in placing, receiving, making, or otherwise enabling or facilitating a bet or wager that violates the applicable federal, state, tribal, or local law but does not include

- (1) the transmission of information for use in news reporting of wagering activities, as long as such transmission does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers in a jurisdiction where such betting is illegal;**
- (2) any posting or reporting of any educational information on how to make a legal bet or wager or the nature of betting or wagering; or**
- (3) advertising relating to betting or wagering sent or broadcast from a jurisdiction where such betting or wagering is legal, as long as such advertising does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers in a jurisdiction where such betting is illegal.**

The term "transmission" or "transmit" means to place, send, receive, transfer, post, disseminate, or otherwise convey from one person or place to another.

The term "bets or wagers" means the staking or risking by any person of something of value upon

- (A) any contest or game based whole or in part on chance, including a lottery;**
- (B) one or more sporting events or contests, or one or more performances of the participants in such events or contests, including any scheme of a type described in section 3702 of title 28, United States Code; or**

(C) a future contingent event not under the person's control or influence

with an agreement or understanding that the person or another person will or may receive something of value as a result of such stake or risk. However, the term does not include

(A) a bona fide business transaction in securities or commodities of the nature governed by the federal securities and trading laws of the United States;

(B) a contract of indemnity or guarantee; or

(C) a contract for insurance."

Section 1084 of title 18, United States Code, is amended

(1) by striking the title and inserting "Use of a communication facility to transmit bets or wagers; penalties".

(2) in paragraph (a) by:

(A) by inserting "(1)" after "facility" and before "for";

(B) by inserting "within the special maritime and territorial jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a knowing effect in the United States" after "commerce," and before "of bets";

(C) by striking "on any sporting event or contest," after "wagers" and before "or";

(D) by inserting "(2)" after "or" and before "for"; and

(E) by inserting "within the special maritime and territorial jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a knowing effect in the United States" after "commerce," and before "which".

(3) striking paragraph (b).

(4) in paragraph (c) by:

(A) by striking "(c)" after "paragraph" and inserting "(b)" and

(B) by inserting "or Tribe" after State.

(5) in paragraph (d) by:

(A) by striking "(d)" after "paragraph" and inserting "(c)";

(B) by striking "common carrier, subject to the jurisdiction of the Federal

- 1 Communications Commission," and inserting "person or entity";
2 (C) by inserting "tribal" after "State," and before "or";
3 (D) by inserting "used by a subscriber" after "be" and before "for";
4 (E) by striking "or receiving gambling information in interstate or foreign
5 commerce" and inserting "bets or wagers, or information assisting in the
6 placing of bets or wagers, through interstate or foreign commerce, within
7 the special maritime and territorial jurisdiction of the United States, or any
8 place outside the jurisdiction of any nation which has a knowing effect in
9 the United States";
10 (F) by inserting "tribal" after "state," and before "or";
11 (G) by striking "common carrier" and inserting "person or entity"; and
12 (H) by inserting ", tribal," after "State" and before "or".
13

- 14 (6) inserting the following new paragraph (d): "Nothing in this section shall repeal or
15 amend the rights or privileges accorded tribes under the Indian Gaming Regulatory
16 Act of 1988, 25 U.S.C. § 2701, et seq."
17
18 (7) in paragraph (e) by inserting at the end "The term "Tribe" or "tribal" refers to an
19 Indian tribe, as defined under section 4(5) of the Indian Gaming Regulatory Act of
20 1988, 25 U.S.C. § 2703(5)."
21
22 (8) inserting the following new paragraph (f): "This section shall not prohibit the use
23 of a communication facility in the operation of a state-operated lottery (including a
24 multi-state lottery jointly operated by several states), so long as such lottery:
25
26 (1) only transmits bets or wagers to or from states that have explicitly
27 authorized the operation of such a lottery within their borders;
28
29 (2) if authorized by a state to operate within its borders, complies with all
30 other laws of that state;
31
32 (3) only receives bets or wagers from state-authorized locations that are open
33 to the public generally, and does not enable betting or wagering to be
34 transmitted to or from private residences or unauthorized locations; and
35
36 (4) is otherwise in compliance with federal law.
37

38 **REDLINE-STRIKEOUT VERSION**

39 **§ 1081. Definitions**

40
41
42 **As used in this chapter:**
43

1 The term "gambling ship" means a vessel used principally for the operation of one or more
2 gambling establishments. Such term does not include a vessel with respect to gambling aboard
3 such vessel beyond the territorial waters of the United States during a covered voyage (as defined
4 in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).

5
6 The term "gambling establishment" means any common gaming or gambling establishment
7 operated for the purpose of gaming or gambling, including accepting, recording, or registering
8 bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money
9 or other thing of value.

10
11 The term "vessel" includes every kind of water and air craft or other contrivance used or
12 capable of being used as a means of transportation on water, or on water and in the air, as well as
13 any ship, boat, barge, or other water craft or any structure capable of floating on the water.

14
15 The term "American vessel" means any vessel documented or numbered under the laws of
16 the United States; and includes any vessel which is neither documented or numbered under the
17 laws of the United States nor documented under the laws of any foreign country, if such vessel is
18 owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United
19 States or corporations organized under the laws of the United States or of any State.

20
21 The term "wire communication communication facility" means any and all
22 instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery
23 of communications) used or useful in the transmission of writings, signs, pictures, and sounds of
24 all kinds by aid of wire, cable, satellite, microwave, or other like connection (whether fixed or
25 mobile) between the points of origin and reception of such transmission.

26
27 The term "information assisting in the placing of bets or wagers" means information
28 knowingly transmitted by an individual in the business of betting or wagering for use in placing,
29 receiving, making, or otherwise enabling or facilitating a bet or wager that violates the applicable
30 federal, state, tribal, or local law but does not include

31
32 (i) the transmission of information for use in news reporting of wagering
33 activities, as long as such transmission does not solicit or provide
34 information for the purpose of facilitating or enabling the placing or receipt
35 of bets or wagers in a jurisdiction where such betting is illegal;

36
37 (ii) any posting or reporting of any educational information or how to make a
38 legal bet or wager or the nature of betting or wagering; or

39
40 (iii) advertising relating to betting or wagering sent or broadcast from a
41 jurisdiction where such betting or wagering is legal, as long as such
42 advertising does not solicit or provide information for the purpose of
43 facilitating or enabling the placing or receipt of bets or wagers in a

jurisdiction where such betting is illegal.

The term "transmission" or "transmit" means to place, send, receive, transfer, post, disseminate, or otherwise convey from one person or place to another.

The term "bets or wagers" means the staking or risking by any person of something of value upon

(A) any contest or game based whole or in part on chance, including a lottery,

(B) one or more sporting events or contests or one or more performances of the participants in such events or contests, including any scheme of a type described in section 2702 of title 28, United States Code, or

(C) a future contingent event not under the person's control or influence

with an agreement or understanding that the person or another person will or may receive something of value as a result of such stake or risk. However, the term does not include

(A) a bona fide business transaction in securities or commodities of the nature governed by the federal securities and trading laws of the United States,

(B) a contract of indemnity or guarantee, or

(C) a contract for insurance.

§ 1084. Transmission of wagering information, penalties Use of a communication facility to transmit bets or wagers, penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a communication facility

(1) for the transmission in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a knowing effect in the United States, of bets or wagers, or information assisting in the placing of bets or wagers on any sporting event or contest, or

(2) for the transmission of a communication in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a knowing effect in the United States, 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 or tribe.~~

~~(d) When any person or entity, common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, tribal or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used by a subscriber for the purpose of transmitting or receiving gambling information in interstate or foreign commerce bets or wagers, or information assisting in the placing of bets or wagers, through interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a knowing effect in the United States in violation of federal, state, tribal 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 person or entity 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, tribal or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.~~

~~(d) Nothing in this section shall repeal or amend the rights or privileges accorded tribes under the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701, et seq."~~

(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. The term "tribe" or "tribal" refers to an Indian tribe, as defined under section 4(5) of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2703(5).

~~(f) This section shall not prohibit the use of a communication facility in the operation of a state-operated lottery (including a multi-state lottery jointly operated by several states), so long as such lottery:~~

(1) only transmits bets or wagers to or from states that have explicitly authorized the operation of such a lottery within their borders;

(2) If authorized by a state to operate within its borders, complies with all other laws of that state.

(3) Only receives bets or wagers from state authorized locations that are open to the public generally, and does not enable betting or wagering to be transmitted to or from private residences or unauthorized locations, and

(4) Is otherwise in compliance with federal law.

LEGISLATIVE HISTORY

Section 1084 of Title 18 makes unlawful the use of a wire communication facility to transmit in interstate or foreign commerce bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest. Section 1084 assists the various States, the District of Columbia, commonwealths, territories, and possessions of the United States with the enforcement of their laws pertaining to gambling, bookmaking, and like offenses, and aids in the suppression of gambling activities by organized crime groups.

In recent years, however, technology has allowed for new types of electronic gambling, including interactive games on the Internet such as poker and blackjack, which may not clearly be included within the types of gambling currently made illegal by section 1084. As a result, it was necessary to amend section 1084 to eliminate any ambiguities in the law and to ensure that new types of gambling activities made possible by emerging technologies are prohibited.

The growing availability of emerging technologies has had a prolific effect on gambling businesses. The Internet and other new technologies have made possible types of gambling that were not feasible a few years ago (i.e. interactive Internet poker operated from a computer located in a foreign country). Not only have these technologies created new mechanisms by which to gamble, they have made gambling anonymous and readily available to virtually anyone at any time and at any place where there is an Internet hookup. As a result, the number of Internet gambling sites has increased at an alarmingly rapid rate. At a March 23, 1999, Congressional hearing, Ohio Attorney General Betty Montgomery estimated that nearly 300 gambling web sites currently were operating on the Internet. Internet Gambling, Hearings before the Subcommittee on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary, 106th Cong., 1st Sess. (March 23, 1999) (statement of Ohio Attorney General Betty Montgomery). A recent study by the research group Christiansen/Cumming Associates estimated that between 1997 and 1998, Internet gambling more than doubled, from 6.9 million to 14.5 million gamblers, with revenues doubling from \$300 million to \$651 million. This growth has created several problems for federal, state, tribal, and local governments in the enforcement of their gambling laws.

First, since the Internet allows virtually instantaneous and anonymous communication that is difficult to trace to a particular individual or organization, the potential for operators of Internet

gambling sites to successfully defraud their customers is significantly greater than with traditional casino-style gambling. Fraudulent activities could range from the manipulation of gambling odds to credit card theft. In addition, the anonymity allowed by the Internet also makes the medium attractive to organized crime since it is difficult for law enforcement to detect and prevent crimes being committed by unknown and untraceable persons.

Second, because the Internet provides people with the opportunity to gamble at any time and from any place, Internet gaming presents a greater danger for compulsive gamblers and may cause severe financial consequences for the player and those dependent on the player's resources (e.g., dependent children).

Last, because the Internet is both anonymous and widely available, it is much more difficult to prevent minors from gambling. Currently, gambling businesses have no reliable way of confirming that gamblers are not minors who have gained access to a credit card and are gambling on their websites.

These problems are exacerbated by the international scope of the Internet. While the United States has determined that there is a strong law enforcement priority to prohibit Internet gambling, other countries, including Australia, have chosen to allow unrestricted Internet gambling or, in the alternative, to regulate betting and wagering on the Internet. The amendments to section 1084 do not interfere with the operation of these legal gambling operations, so long as such operations do not transmit bets or wagers to or from the United States. In fact, the amendments do not alter the existing prohibition on the transmission of bets or wagers, or information assisting in the placing of bets or wagers, in "interstate or foreign commerce" by those in the betting and wagering business. Currently, law enforcement agencies prosecute individuals engaged in the business of betting or wagering in foreign countries who knowingly transmit illegal sports bets and wagers to or from U.S. residents. These agencies will continue to prosecute such cases, as well as prosecute matters involving the transmission of non-sports betting and wagering, under the amended section 1084. As for the enforcement of section 1084 against those betting and wagering businesses operating in foreign commerce, the United States shall attempt to procure the cooperation of foreign governments in enforcing the prohibition of Internet gambling within the United States, when foreign gambling operations transmit bets or wagers, or information assisting in the placing of bets or wagers, to the United States.

As noted above, section 1084 currently includes the transmission of bets or wagers, or information assisting in the placement of bets or wagers, in "interstate or foreign commerce." In recent years, however, virtual betting parlors accepting bets from individuals in the United States have attempted to avoid the application of United States law by locating themselves outside of the United States and beyond the reach of "interstate and foreign commerce." See e.g. United States v. Montford, 27 F.3d 137 (5th Cir. 1994) (overturning a conviction under section 1084 based on communications between the United States and a boat on a "cruise to nowhere" because the communication did not involve foreign commerce as the boat had no contact with foreign country or waters within jurisdiction of foreign country). Amending section 1084 to prohibit the

transmission of bets or wagers "within the special maritime and territorial jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a knowing effect in the United States," assures that these businesses cannot avoid the prohibition of Internet gambling within the United States.

A comprehensive prohibition of illegal Internet gambling can be efficiently accomplished through federal legislative efforts. Indeed, the interstate nature of Internet gambling has resulted in states encouraging the federal government to take the lead in tackling Internet gambling. Protection of the integrity of states' policies regarding gambling requires a federal prosecutorial option when communication facilities are used to facilitate illegal gambling. The National Association of Attorneys General (NAAG) has in recent months confirmed to both Congress and the National Gambling Impact Study Commission that it supports revising federal law to clarify that Internet gambling is prohibited. See e.g. Internet Gambling. Hearings before the Subcommittee on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary, 106th Cong., 1st Sess.(March 23, 1999)(statement of Wisconsin Attorney General James E. Doyle). Consequently, the federal government is in the best position to balance the various interests of the states with the broader policy interest in prohibiting Internet gambling and its associated societal ills.

The amendments to Chapter 50 of Title 18 accomplish the following:

- (1) clarify that section 1084 applies to all betting or wagering (not merely betting or wagering on sports events) and includes the transmission of bets and wagers over any communication facilities;
- (2) require any entity or person, not just a common carrier, that provides a facility to an individual in the business of betting and wagering to cooperate with law enforcement agencies;
- (3) apply section 1084 to those engaged in the business of betting or wagering who are located outside the territorial jurisdiction of the United States, when those individuals knowingly facilitate or aid in unlawful betting and wagering by transmitting a bet or wager, or information assisting in the placing of a bet or wager, to or from an individual located within the United States;
- (4) amend the definition of various terms contained in section 1081;
- (5) clarify that section 1084 does not prohibit the lawful use of communication facilities in the operation of state lotteries; and
- (5) clarify that section 1084 does not amend or repeal IGRA.

Several definitions were either added to or amended in section 1081 that directly affect

1 section 1084. These changes were necessary to eliminate any doubt as to which individuals, and
2 to what activities, the statute applies. A definition for "information assisting in the placing of bets
3 or wagers" was added to ensure that those engaged in the business of betting or wagering who do
4 not directly accept bets or wagers but nonetheless facilitate or enable betting or wagering, are
5 liable for their actions. See e.g., United States v. Miller, 22 F.3d 1075 (8th Cir. 1994)(conviction
6 for aiding and abetting under section 1084 upheld for Georgia defendant who obtained daily point
7 spreads from another Georgia bookmaker who, in turn, obtained the information via telephone
8 from Las Vegas); United States v. McLeod, 493 F.2d 1186 (7th Cir. 1974)(defendant prosecuted
9 under section 1084 for copying Las Vegas line information for football games and relaying such
10 information to co-defendant via telephone to Indianapolis for use on parlay cards). It also
11 situations where individuals in the business of betting and wagering set up "shell" phone numbers
12 or Internet sites which enable individuals to bet or wager. See United States v. Kelly, 395 F.2d
13 727 (2d Cir. 1968)(defendant engaged in giving "information assisting in the placing of bets or
14 wagers when he furnished prospective bettors with telephone number and code name that
15 informed him, when number was called, that caller was ready to place a bet).

16
17 Recognizing that limitations on the transmission of information could potentially raise First
18 Amendment concerns if a definition of "information assisting in the placing of bets or wagers"
19 infringed on protected speech, the definition contains several exceptions. The first is a news
20 reporting exception that weighs the interest of legitimate news reporting against an interest in
21 protecting the public from the distribution of gambling-enabling information by those in the
22 business of betting or wagering. Under the exception, the transmission of "news reporting
23 information" is only not protected is if it is transmitted by an individual in the business of betting
24 or wagering in order to enable or facilitate illegal wagering. See Village of Hoffman Estates v.
25 Flipside, Hoffman Estates, Inc., 455 U.S. 489, 496 (1982)(the First Amendment does not protect
26 an offer to engage in an unlawful transaction or activity).

27
28 The new definition of "information assisting in the placing of bets or wagers" also reflects
29 the Supreme Court's recent opinion in Greater New Orleans Broadcasting Association, Inc., et al.
30 v. United States et al., No 98-397 (June 14, 1999), which discusses the legality of prohibiting
31 broadcasters from carrying advertising about legal privately operated commercial casino gambling
32 operations. In Greater New Orleans, the Court determined that the prohibition of advertisements
33 of lawful private casino gambling by broadcast stations located where gambling is legal is
34 unconstitutional. For the most part, amended section 1084 does not prohibit advertising over
35 communication facilities for legal gambling operations. We recognize that section 1084 may
36 result in advertisements for a legal form of gambling in one state flowing over into a state where
37 the same form of gambling is illegal. However, it is appropriate for Congress to not favor the
38 gambling or non-gambling states in these circumstances. Non-gambling states, however, are not
39 left unprotected by the amendments to section 1084. The one type of gambling advertising that is
40 prohibited by section 1084 is that advertising designed to enable or facilitate the placing or
41 receiving of bets or wagers in a state where such bets or wagers are illegal. This exception is
42 designed to protect non-gambling states' interests in upholding their gambling policies within their
43 borders.

1 To further clarify the scope of the statute, definitions of "transmission" and "bets or
2 wagers" were added to section 1081. The definition of "transmission" makes clear that placing,
3 sending, receiving, transferring, posting, disseminating, or otherwise conveying bets or wagers, or
4 information assisting in the placing of bets or wagers, is included within the statute. This
5 definition supports the interpretation of many courts that section 1084's "transmission" language
6 applies to those individuals in the business of betting or wagering who "receive" bets or wagers,
7 or information assisting in the placing of bets or wagers, from others. See e.g., United States v.
8 Pezzing, 535 F.2d 483, 484 (9th Cir.) (per curiam), cert. denied, 429 U.S. 839 (1976) (finding
9 that section 1084 forbids "the use of interstate facilities for sending or receiving wagering
10 information"). In addition, the definition of "transmission" is intended to include the
11 dissemination or posting of information on the Internet and other emerging technologies. The
12 definition of "bets or wagers" makes clear what constitutes a bet or wager for purposes of section
13 1084.

14
15 The last revision to section 1081 is that the definition of "wire communication facility"
16 was changed to "communication facility." This change removes any doubt about whether
17 microwave, satellite, or other communication facilities that do not transmit through landline cables
18 or wires are included in section 1084.

19
20 Since section 1084 involves more than the "transmission of wagering information," the
21 title of the section was changed to "Use of a communication facility to transmit bets or wagers;
22 penalties." This title more accurately reflects the scope of section 1084.

23
24 Paragraph 1084(a) was amended to make clear several points. The scope of section 1084
25 was expanded to include all bets or wagers over a communications facility, not merely bets or
26 wagers on sporting events or contests. In addition, paragraph 1084(a) was divided into two
27 subsections. The first subsection confirms that an individual in the business of betting and
28 wagering is prohibited from transmitting bets or wagers, or information assisting in the placing of
29 bets or wagers "in interstate or foreign commerce, within the special maritime and territorial
30 jurisdiction of the United States, or any place outside the jurisdiction of any nation which has a
31 knowing effect in the United States." The subsection also gives the United States broader
32 jurisdictional authority to enforce section 1084, thus addressing the problems found in United
33 States v. Montford discussed above. The identical jurisdictional fix was made to the second
34 subsection, which pertains to the use of a communication facility to receive money or credit as a
35 result of bets or wagers or information assisting in the placing of bets or wagers. This subsection
36 is designed to prohibit the transmission of telegraphic money orders, credit card charges, and the
37 like to those engaged in the business of betting or wagering.

38
39 Since section 1081 now contains a definition of "information assisting in the placing of
40 bets or wagers," the exceptions to "information assisting in the placing of bets or wagers" found
41 in paragraph 1084(b) became unnecessary, as the exceptions were incorporated into the
42 definition. Consequently, 1084(b) was stricken and 1084(c) became 1084(b) and 1084(d) became
43 1084(c).

1 Paragraph 1084(b) was amended to make it applicable to any person or entity, not only a
2 common carrier subject to the jurisdiction of the Federal Communications Commission. Since
3 new technologies may be provided by facilities owned or operated by non-common carriers, this
4 amendment was necessary to provide law enforcement agencies with the tools necessary to
5 enforce section 1084. Paragraphs 1084(b) and (c) now also contain references to "Tribe" or
6 "tribal." This change recognizes the sovereignty of Indian tribes and enables tribes to enforce
7 their customary or tribal laws within their respective jurisdictions. Also, the phrase "or receiving
8 gambling information in interstate or foreign commerce" after the word "transmitting" in 1084(c)
9 was eliminated. Since section 1081 now includes a definition of "transmission," which explicitly
10 includes the "receipt" of bets or wagers, or information assisting in the placing of bets or wagers,
11 this clause became redundant and unnecessary.
12

13 A new paragraph 1084(d) was added to the section. This paragraph provides that section
14 1084 does not repeal or amend the Indian Gaming Regulatory Act (IGRA). This paragraph is
15 intended to address concerns that amending section 1084 would make illegal those gambling
16 activities occurring entirely on Indian lands that are currently legal under IGRA. In addition, a
17 definition of "Tribe or tribal" was added to paragraph 1084(e), following the description of a
18 "State." This definition reflects the definition of "Tribe" contained in IGRA.
19

20 A new paragraph 1084(f) was added to the section to protect legal state-operated
21 lotteries. This paragraph insures that existing multi-state lotteries that allow individuals in
22 multiple states to purchase chances in the same lottery are not made illegal by the amendments to
23 section 1084, especially since these lotteries may use communication facilities to transmit bets or
24 wagers, or information assisting in the placing of bets or wagers. The statute, however, only
25 protects state-operated lotteries and does not allow for the transmission of bets or wagers to or
26 from states where such lotteries are illegal, or for the transmission of bets or wagers to or from
27 unauthorized locations or private residences.
28