

You Got To Know When to Fold ‘em: Online Gambling Laws¹

This IPRO report examines the costs and benefits of legalizing online gambling on the Federal level.

Definitions

Online Gambling: when an individual places a bet over the Internet on the outcome of a game change. This includes sports betting and casino-style games.²

Overview

Unlike traditional land-based casinos, the action at online casinos is perpetual and available to anyone with Internet access.³ Since the emergence of the Internet in the 1990s, Federal and State governments have been slow to act on and clarify the legality of online gambling. There are many practical and jurisdictional problems with legislation intending to regulate online activity because the players and businesses may be located across state and national borders.⁴ Due to the infancy of the Internet gambling industry, few cases concerning the topic have been tried in court. The reasons for the minimal case law on Internet gambling include not only the age of the industry, but also the ambiguity surrounding Internet gambling legislation and jurisdictional issues.⁵ As of today, nine states have explicitly outlawed online gambling (see Table 1).

Federal Action

The Federal Wire Wager Act of 1961

The act was intended to assist the states in enforcing their respective laws on gambling, but it was passed long before the development of the Internet. Under the law, anyone betting or wagering while knowingly using wire communications will be fined or imprisoned for up to two years. Although several legislative attempts tried to amend this act to encompass online gambling, the courts have disagreed to the types of gambling covered by the act. Currently the act only applies to sports betting.⁶

More than a decade ago, Congress created the National Gambling Impact Study Commission Act and gave it the task of conducting a comprehensive study of the social and economic effects of gambling in the United States. The commission recommended that Internet gambling be prohibited.⁷ The National Gambling Impact Study Commission recommended that states are best suited to regulate gambling in all but two areas: Internet gambling and tribal gambling.⁸ Therefore, these two types present a grey area for regulation.

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² Kelley, Joseph. "Internet Gambling Law." William Mitchel Law Review. (2000) 26.1

³ Hammer, Ryan D. "Does Internet Gambling Strengthen the U.S. Economy? Don't bet on it." *Federal Communications Law Journal*. Vol 54, p. 103-128. December 2001. <http://www.law.indiana.edu/fclj/pubs/v54/no1/Hammer.pdf>

⁴ Schmitt, Michael. "The Uncertain Future of Online Gambling." (2008) <<http://heinonline.org/HOL/Page>>.

⁵ Ibid.

⁶ Lundin, Tom. "The Internet Gambling Prohibition Act of 1999" Georgia State University Law Review. (2000)

⁷ Di Gregory, Kevin V. "The Future of U.S. Internet Gambling Regulation." Manatt. 30 April 2010.

<<http://www.manatt.com/newsevents.aspx?id=11536>>.

⁸ Ibid.

*Unlawful Internet Gambling Enforcement Act of 2006*⁹

- Prohibits businesses from knowingly accepting payment in connection with someone's bet or wager through the use of the Internet.
- Only applies to activities that violate already existing anti-gambling laws.
- Is not meant to alter or supersede any existing state or tribal gambling law.
- Prohibits only the acceptance of money for Internet gambling, and not the sending. This means the individual participating cannot be held liable.
- Because the language is ambiguous, the law may seem like it does not apply to some activities, such as the trading of exchanges, securities or futures.

United States House Hearing: "Internet Gaming: Regulating in an Online World"

In November 2011, the United State House Subcommittee on Commerce, Manufacturing, and Trade held a second hearing on Internet gambling. The meeting focused on how proposed online gambling legislation should be regulated at the state and federal level. State representatives discussed brought up various costs and benefits associated with legalization. Many opposed to online gambling legislation cited the possible rapid spread of gambling through today's technology as well as the need to maintain states' rights in controlling policy within its borders. The President of the American Gaming Association stated that he supported federal legislation to regulate online poker as long as states could still determine whether or not to permit the activity for its residents. Further arguments on the topic are explained in the following section.¹⁰

Arguments In Favor of and Against Online Gambling

In Favor

Prohibition infringes on freedom and liberty

In a lawsuit brought up by the Internet Media and Entertainment and Gaming Association, the they group that the 2006 law "prevents Americans from engaging in their fundamental rights to conduct their lives in the manner they wish to live it- to be free from the government imposing public morality in the privacy of one's home."¹¹ Prohibition therefore infringes on the liberty to conduct one's private life freely.

Lawful activities are easier to tax and control

- Wired Safety concludes that legalization is the best way to protect consumers, families, and problem gamblers from the harmful effects of Internet gambling. Prohibition is not the answer.¹²

⁹ Rose, Nelson. "The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed." Gaming Law Review. December 2006 10.6

¹⁰ "Online Poker Hearing Tackles State-Federal Regulation Debate." Off Shore Gaming Association. 21 November 2011. <http://www.osga.com/artman/publish/article_9768.shtml>.

¹¹ Parry, Wayne. "NJ voters: We want to bet on sports if US says yes." Associated Press, 9 November, 2011

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Gambling Addiction Statistics. Gambling Addiction. Nov. 2011. <<http://rehab-international.org>>

- Online gamblers would have to pay taxes to both the state and federal government and operators would likely have to be licensed in order to operate.¹³ This would provide greater legitimacy to online betting and bring in revenue for the state.
- In 2000, Internet gambling revenues reached a total of \$2.2 billion worldwide. Consumer spending on traditional gambling generating \$61.4 billion for the U.S. economy in the same year. Of the \$61.4 billion, over \$20 billion went to the government because of gambling privilege taxes.¹⁴ Similar types of regulation on online gambling could bring in just as much revenue for the federal and state governments.
- If online gambling was taxed and regulated, the possibility of losing may be alleviated if the individual knows that their money will be reinvested into the economy. Currently, a portion of a lottery ticket cost goes to improve education or infrastructure. However, when an individual participates in an online lottery, the money will not be reinvested in economic or social improvement.¹⁵

Illegal online gambling deprives the economy and society

Legal gambling is permitted in the United States if strict regulations like accounting procedures are met. However, there are no such procedures for online gambling. Many state and local governments are dependent on traditional gambling for tax revenues. Internet gambling deprives the economy of tax revenues, costs the country jobs, and prevents the government from obtaining the fees associated with traditional gambling.¹⁶ Backdoor deals will likely occur regardless of state or national law, and it would therefore be safer and more beneficial to regulate it.

States cannot adequately monitor and regulate online gambling on their own

Traditionally, gambling is regulated by individual state cases with minimal uniformity and minimal federal involvement. The federal government could better address the issue of online gambling because such gambling it is difficult for states to monitor and regulate.¹⁷

Against

Harmful effects on society

- The main reason for prohibiting online gambling and gambling more generally is the apparent toll it takes on a society. In the United States, fifteen million people are at risk of becoming problem gamblers and about 2.5 million suffer from compulsive gambling.¹⁸
- Individuals who exhibit signs of problem gambling are significantly more likely to use engage in illegal and dangerous activities like binge drinking.¹⁹
- Legalizing online gambling will arguably open the door for people who would not gamble otherwise and contribute further to those already suffering from problem gambling.²⁰

Compulsive gambling

Accessibility is greatly increased with the use of the Internet because gamblers do not have to travel or try to contact someone to place a bet. Compulsive gambling may increase astronomically as a result because temptations are so easily met on the computer. Internet gambling is the most addictive form of betting because “it combines high speed, instant gratification with the anonymity of gambling from home.”²¹

¹⁹ Berzon, Alexandra, “Christie Vetoes Online Gambling Bill” [The Wall Street Journal](#) 3 March 2010.

Sovereignty infringement

State governments do not want the federal government to infringe on their sovereignty or their authority when trying to legalize or prohibit online gambling on a national level.²²

Difficulty for banks to rely on an unregulated industry

Internet gambling places banks and credit card companies in a difficult position. Many lawsuits have been filed by individuals who lost money in a bet and refuse to pay their gambling debt. These lawsuits could leave banks without the ability to collect debts owed to them.²³

State Action: Legalization

In light of difficult economic times, a few states have begun proposing bills to legalize online gambling for additional state revenues. However, others have continued to explicitly ban online gambling all together.

New Jersey

In early 2011 the New Jersey State house passed a bill that would have made it the first state to outright legalize Internet gambling. Governor Christie vetoed the bill in March. The bill would have allowed bets to be placed throughout the state even though physical casinos are legal only in Atlantic City. The legislation would require the servers for the gambling websites to be located with Atlantic City.²⁴

New Hampshire

There is a pending gambling bill that would allow the state lottery commission to issue two licenses to operate up to 3,500 slot machines per license. A previous failed bill attempted to add 17,000 slot machines to the state's racetracks. The governor was opposed to the failed bill, and instead proposed that the state authorize online gambling in order to generate additional revenues.²⁵

Washington, D.C.

In Washington D.C.'s 2011 budget, there was a provision included that would legalize Internet gambling within its jurisdiction. D.C. Council member Michael A. Brown said, "There was really no clear law that said we could not do this."²⁶ The estimated revenue through the year 2014 as a result of the new industry is \$13 million.²⁷

Illinois

The state passed part of its stimulus plan bill in 2009 that also included gambling provisions. Video poker machines are now allowed at bars, restaurants, and social clubs. The legislation allows up to

²⁰ Walker, Douglas. "Gambling Behavior." (2010) UNLV Gaming Research and Review Journal (2010) 14.1

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ "Gambling Developments in the States, 2010." National Conference of State Legislatures. 12 May 2010. <<http://www.ncsl.org/default.aspx?tabid=20222>>

²⁵ Ibid.

²⁶ Berkens, Michael H. "Washington DC Becomes First Jurisdiction In The US To Legalize Online Gambling." The Domians. 13 April 2011.

²⁷ Associated Press. "Online Gambling Coming to the District" NBC Washington. 13 April 2011.

²⁸ Ibid.

45,000 machines in the state. Although online gambling is outlawed, an additional provision of the bill allows for the online sale of lottery tickets. However, legal uncertainty remains around this provision.²⁸

State Action: Prohibition

Washington (state)

Washington state law prohibited all online forms of gambling in 2006 following the national-level Unlawful Internet Gambling Enforcement Act of the same year. The law also made transmitting gambling information punishable by as much as a class C felony; the previous penalty prior to the amendment was only a misdemeanor. The law states that it is illegal to:

- Operate an Internet gambling site
- Gamble on the Internet
- Install or maintain equipment to send or receive gambling information
- Facilitate internet gambling in any way

The state aimed to focus enforcement on larger, higher level Internet gambling activity through this law. The legislation sites online gambling risks such as credit card fraud, identity theft, problem gambling, and criminal uses that are eliminated by the amendment.²⁹

²⁹ “Illegal Internet Gambling.” Washington State Gambling Commission. September 2011. <http://www.wsgc.wa.gov/faq/internet_gambling.pdf>.

Table 1^{30, 31}

State Actions to Outlaw and Legalize Online Gambling

State	Explicitly outlawed online gambling	Some form of legalized gambling permitted
Alabama		X
Alaska		X
Arizona		X
Arkansas		X
California		X
Colorado		X
Connecticut		X
Delaware		X
Florida		X
Georgia		X
Hawaii		
Idaho		X
Illinois	X	X
Indiana	X	X
Iowa		X
Kansas		X
Kentucky		X
Louisiana	X	X
Maine		X
Maryland		X
Massachusetts		X
Michigan		X
Minnesota		X
Mississippi		X
Missouri		X
Montana	X	X
Nebraska		X
Nevada	X	X
New Hampshire **		X
New Jersey **		X
New Mexico		X
New York		X
North Carolina		X
North Dakota		X
Ohio		X
Oklahoma		X
Oregon	X	X
Pennsylvania		X
Rhode Island		X
South Carolina		X
South Dakota	X	X
Tennessee		X
Texas		X
Utah		
Vermont		X
Virginia		X
Washington	X	X
West Virginia		X
Wisconsin	X	X
Wyoming		X

** Proposed legalization of online gambling in 2011.

³⁰ Ibid.

³¹ Ibid.

This report was prepared in December 2011 by the Iowa Policy Research Organization (IPRO), a non-partisan public policy undergraduate group at the University of Iowa. For additional research on this or other issues, please visit our website at <http://www.uiowa.edu/~ipro/> or contact rene-rocha@uiowa.edu.