Pirates of the Carribean: Offshore Internet Gambling Sites Cursed by Unlawful Internet Gambling Enforcement Act

Bunnam Sprehichet

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Pirates of the Caribbean:
Offshore Internet Gambling Sites
Cursed by the Unlawful Internet Gambling Enforcement Act

by

BUNNAM SREPICHET*

I. Introduction ........................................................................................................... 140
   A. Policy Concerns Surrounding Internet Gambling ........................................ 141
   B. Enactment of the UIGEA ........................................................................ 144
   C. State and Federal Regulatory Authority over Internet Gambling .......... 147

II. Background on Internet Gambling .................................................................. 150
   A. Origin and History of Internet Gambling .................................................. 150
   B. Overview: Unlawful Internet Gambling Enforcement Act of 2006 .......... 153
      1. Lawful Versus Unlawful Internet Gambling ...................................... 154
      2. Criminal and Civil Sanctions and Pending Regulatory Action ...... 155
   C. Overview: U.S. Federal Laws Relevant to Internet Gambling .......... 156

III. Analysis ............................................................................................................ 158
   A. UIGEA Enforcement Through Existing Laws ....................................... 158
      1. Closing the Loophole on the Wire Act of 1961 ................................. 158
      2. UIGEA and Other Laws Relevant to Internet Gambling: The Travel Act and the Illegal Gambling Business Act .................... 164
   B. Offshore to Offline: UIGEA Curbing Effect on the Internet Gambling Industry ................................................................. 165
   C. UIGEA and the Critics ............................................................................. 169

IV. Proposals for Pending UIGEA Regulations ................................................. 173

V. Conclusion ....................................................................................................... 176

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I wanted more from life, than four kids and a wife . . . But at gambling, I was lucky, and so I left Kentucky . . . But when you love the green backed dollar, sorrow always bound to follow . . . But a gambler never seems to stop, till he loses all he’s got . . . When I ran out, somebody else walked in . . . a gambler loses much more than he wins.¹

- Merle Haggard, Kentucky Gambler

I. Introduction

The addictiveness of Internet gambling, once likened to the “crack cocaine of gambling,”² has become somewhat of a reality. The expansion of the Internet and the media blitz of TV poker shows have contributed to the surge in poker popularity and spawned a new generation of Internet gamblers. Gambling online has increased exponentially, with online poker being the fastest growing segment of the online gambling industry.³ With as many as 2,300 gambling sites, Internet gambling is now estimated to be a $12 billion industry, approximately $6 billion which comes from bettors based in the United States.⁴ Even though about half of the gambling revenue comes from U.S.-based players, Internet gambling has largely, if not almost entirely, been an offshore industry since being introduced in 1995.⁵ By 2010, many estimate that online gambling could grow to a $25-billion industry.⁶

⁴. IGPA HEARING, supra note 1, at 7 (statement of Bob Goodlatte, Rep. in Congress from Virginia).
As a nation full of euphoria-seeking gamblers, along with the recent proliferation of offshore, “casino-style” Internet websites, gambling participants and accessibility have reached record heights never experienced before. This evolving era of offshore Internet gambling operators makes policing them under our current laws almost impractical because it imposes an extraordinary burden on domestic anti-gambling laws that were enacted several decades ago, before the advent of the Internet. The inherent dangers of this widespread attraction with online gambling—primarily financed through the use of financial intermediaries such as “e-wallets”—where gamblers can simply “click their mouse and bet the house,” prompted Congress to promulgate the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).

A. Policy Concerns Surrounding Internet Gambling

The UIGEA seeks to crack down and explicitly address the concerns related to illegal Internet gambling that encourages 1) access to online gambling by minors; 2) organized crime, corruption, and the potential for fraud; 3) gambling addiction; and 4) tax preservation. This section will briefly discuss these policy concerns in turn.


10. “E-wallets,” or electronic wallets, are companies such as Neteller, FirePay, and Citadel that “let customers put money into an account and transfer funds from online sites into those accounts. The sites also allow users and Websites to transfer funds to each other. enabling gambling sites to deduct and add money to users’ accounts.” See Catherine Holahan, Betting Against Online Gambling, BUSINESS WEEK ONLINE, July 12, 2006.


First, gambling by minors is a serious problem\textsuperscript{14} that originates from the anonymity of accessing the Internet.\textsuperscript{15} This makes it very difficult for a gambling site to detect an underage gambler, whereas traditional, land-based casinos can require gamblers to present proof of identification. Other problems contributing to underage access to online gambling include the minor’s “tech-savvy” ability to defeat age-verification procedures where age checks are in place, the little incentive, if any, for offshore Internet gambling sites to prevent underage gambling\textsuperscript{16} because they are already operating illegally,\textsuperscript{17} and the ease of accessing credit cards, either from their parents or using their own credit card to register and set up an account.\textsuperscript{18} Next, Internet gambling could very well encourage organized crime, corruption, and the potential for fraud. An online casino that operates overseas, beyond U.S. jurisdiction, can escape liability for violating American laws and misuse a gambler’s financial data, money, or identity because a user is required to provide this information upon registering with the gambling website.\textsuperscript{19} Moreover, Internet gambling presents a risk for potential fraud because players have no guarantee that games are not rigged or whether their winnings will be paid out.\textsuperscript{20} Representative Jim Leach said that online gambling “makes . . . money laundering an easy endeavor and identity


\textsuperscript{17} See \textit{infra} Part II.B and accompanying text.

\textsuperscript{18} See Landes, \textit{supra} note 14, at 924.


\textsuperscript{20} Anne Lindner, Comment, First Amendment as Last Resort: the Internet Gambling Industry’s Bid to Advertise in the United States, 50 ST. LOUIS L.J. 1289, 1316 (2006).
theft a likely burden." Likewise, "Internet gambling can serve as a vehicle for money laundering by organized crime syndicates and terrorists."22

Another policy concern related to Internet gambling is the potential that it could lead to gambling addiction. Senate Majority Leader Bill Frist explained that "gambling is a serious addiction that undermines the family, dashes dreams, and frays the fabric of society."23 Symptoms of gambling addiction include an impulsive desire to continue to spend "all of one's money gambling, failing in one's attempts to stop gambling, and lying about one's gambling."24 The twenty-four hour accessibility to Internet gambling where one can electronically deposit funds and wager immediately only exacerbates the addiction, especially because a gambler lacks the physical contact with, and becomes detached from, the actual money being gambled.25 The last major policy concern is tax preservation. The IRS has taxing authority over gambling earnings.26 Similarly, states can also tax their citizens provided there is no federal law preemption.27 Mark Blandford, founder of Sportingbet, estimated that his single operation alone would generate approximately $4.4 million in tax revenues a year if it were taxed.28 Simply, offshore Internet gambling sites bring no tax revenue or jobs to the states, but rather siphon billions of dollars from the United States, denying the U.S. government the potential to reap tax revenues, licensing fees, and domestic jobs from a bustling industry. While there are many policy concerns, these represent the four major concerns that prompted the promulgation of the UIGEA.

21. UIGFPA HEARING, supra note 19. at 6 (statement of James A. Leach, Rep. in Cong. from Iowa).
22. IGPA HEARING, supra note 1, at 7 (statement of Bob Goodlatte, Rep. in Cong. from Virginia).
27. Id.
28. Id. at 338.
B. Enactment of the UIGEA

The UIGEA passed the House by an overwhelming vote of 409-2 and the Senate by unanimous consent. On October 13, 2006, now known as “Black Friday” to the Internet gambling industry, President Bush signed the UIGEA into law. One professor argues that the UIGEA passed through Congress as a last minute addition to an unrelated bill, the Safe Port Act, which “according to Sen. Frank Lautenberg (D-N.J.), no one on the Senate-House Conference Committee had even seen the final language of the bill.” Although it was attached to the Safe Port Act that dealt with port security measures, the text of the bill represents the culmination of over ten years of federal Congressional efforts. Since 1995, there have been at least eighteen bills directly related to Internet gambling proposed by Congress, five bills that passed in either the House of Representatives or the Senate, and countless committee hearings and markups. In fact, previous legislative bills evidence that Congress has shown displeasure towards Internet gambling, and its prior fruitless efforts to pass legislation against the gambling industry should not reflect on whether the UIGEA would fail to be enacted into law.

Moreover, in 1996, Congress created the National Gambling Impact Study Commission (“NGISC”) to conduct a “comprehensive legal and factual study of the social and economic implications of

35. UIGEA FACT SHEET, supra note 33, at ii-1.
gambling in the United States,"36 including Internet gambling.37 The study spanned over several years and the NGISC released its final report on June 18, 1999.38 The NGISC recommended that the "President and Congress direct [the Department of Justice] to develop enforcement strategies that include, but are not limited to, Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions."39 The NGISC further recommended "legislation prohibiting wire transfers to known Internet gambling sites, or the banks who represent them."40

As a result of congressional findings, the NGISC recommendations became one of the primary purposes in enacting the UIGEA.41 The UIGEA is also based on, and represents a compilation of, two bills: H.R. 4411 and H.R. 4777 that were sponsored by Representative Jim Leach and Representative Bob Goodlatte, respectively.42 Altogether, the UIGEA’s provisions are a consolidation based on the recommendations by the NGISC and language drawn exclusively from the now-merged bills that combine the financial regulations from H.R. 4411 and the Wire Act amendments from H.R. 4777, as well as injunctive remedies found in both bills.43

Unlike most of the previous legislative anti-gambling bills, the UIGEA is a regulatory and enforcement bill, rather than a blanket prohibition law on gambling. Because of this, prior bills that previously passed either the House or Senate, but not both Houses of Congress in a single session, "became bogged down in objections by special interest groups and their lobbyists, each seeking to include their own carve out from the proposed prohibition."44 As a result, time usually ran out before both Houses of Congress could vote on

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37. Id. §4(a)(2).
39. Id. at 5-12.
40. Id.
42. Rose, supra note 32.
43. UIGEA FACT SHEET, supra note 33, at iii-3.
pending “anti-gambling” legislation that needed to clear committee hearings before being calendared to vote.\textsuperscript{45} For example, the Unlawful Internet Gambling Funding Prohibition passed the House in 2003, but as the year came to a close, the Senate began to focus its attention on more pressing initiatives such as homeland security and Medicare reform, which resulted in the Senate failing to vote on the prohibition legislation.\textsuperscript{46} Further, many legislators believed that prohibition would fail because it was neither the best answer nor a viable solution since many Americans were already engaged in Internet gambling.\textsuperscript{47} In the same sense, proponents favored a regulatory approach to Internet gambling over a policy of prohibition, which would not likely eliminate Internet gambling anyway.\textsuperscript{48} In 2006, however, a change in the political environment proved favorable to the passage of the UIGEA.\textsuperscript{49}

Some argue that Senator Bill Frist made “anti-gambling” legislation a top priority in an effort to gain credibility and garner endorsement for his 2008 presidential nomination among his conservative fellowship by passing high profile conservative laws.\textsuperscript{50} However, Senator Frist decided against running for the White House in 2008.\textsuperscript{51} Others have claimed that Congress was intent on disassociating itself from Jack Abramoff, an American political lobbyist and Republican political activist, who had influentially been involved in opposing various gambling bills\textsuperscript{52} after he pled guilty in federal court to three criminal felony counts for mail fraud, tax evasion, and corruption of public officials,\textsuperscript{53} and to two criminal felony counts, a day later, for conspiracy and wire fraud related to his

\textsuperscript{45} Id.
\textsuperscript{46} DAVID G. SCHWARTZ, CUTTING THE WIRE: GAMBLING PROHIBITION AND THE INTERNET 192 (University of Nevada Press 2005).
\textsuperscript{47} Id. at 193.
\textsuperscript{48} McBurney, \textit{supra} note 26, at 350.
\textsuperscript{49} Walters, \textit{supra} note 44.
fraudulent dealings with SunCruz Casinos.\textsuperscript{54} One legal commentator writes that the UIGEA provided an opportunity for Congress to demonstrate it “had cleaned up its act” and was no longer under the influence of Abramoff.\textsuperscript{55}

Whether it was the personal agenda of a senator or the changing political environment, the justification for the passage of the UIGEA was primarily based on the factual and objective analysis of the NGISC’s recommendations of targeting the financial intermediaries that make payments to Internet gambling sites.\textsuperscript{56} In fact, this concept is at the core of the UIGEA, evidenced by the Commission’s findings at the Act’s outset.\textsuperscript{57} The UIGEA is based on Congress reliance on the following four main findings: 1) Internet gambling is funded primarily through credit cards and wire transfers; 2) the National Gambling Impact Study Commission recommended passage of this type of legislation; 3) Internet gambling is increasing consumer debt problems; and 4) traditional mechanisms of enforcing gambling laws are inadequate.\textsuperscript{58}

C. State and Federal Regulatory Authority over Internet Gambling

While there are several federal laws that theoretically apply to Internet gambling, the UIGEA is the first piece of federal legislation that explicitly targets unlawful Internet gambling.\textsuperscript{59} This suggests that the U.S. government intends to block the facilitation of funds between financial institutions and unlawful Internet gambling sites by imposing criminal sanctions.\textsuperscript{60} Although the Constitution gives the federal government regulatory authority over most gambling activities under the Commerce Clause,\textsuperscript{61} and the power to protect


\textsuperscript{55} Walters, supra note 44.

\textsuperscript{56} NGISC REPORT, supra note 15, at 5-12.


\textsuperscript{58} 31 U.S.C.A. § 5361(a) (West Supp. 2007).

\textsuperscript{59} Susie Mesure, Internet Gambling Firms in Freefall, THE INDEPENDENT (LONDON), Oct. 3, 2006, at 36.

\textsuperscript{60} Id.

\textsuperscript{61} The Commerce Clause provides that Congress shall have the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. CONST. art. I, § 8, cl. 3. See also I. Nelson Rose & Martin D. Owens, INTERNET GAMING LAW 62-63 (Mary Ann Liebert, Inc. 2005) (explaining that gambling is considered “economic activity” and therefore subject to federal regulation under the
national interests when necessary, the government has shown reluctance in exercising their powers to regulate Internet gambling. This is likely because current federal laws that apply to Internet gambling are contingent upon state legislation. Moreover, the tradition of state regulation over gambling has expanded to include Internet gambling. The states authority over regulating Internet gambling could very well be read into the United States Code which states in pertinent part that "the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders." Under this reading, the states should be the primary regulators of Internet gambling pursuant to U.S. law.

As the principal arbiter of gambling regulation, each state’s legal status, as it applies to a variety of online gambling transactions in the context of the UIGEA, varies widely from state to state. While the purpose of this note is neither to analyze the law of each of the 50 states nor detail the novel jurisdictional and law enforcement issues related to gambling, it does give a brief overview of some states’ regulations as well as address the jurisdictional issues when appropriate. To illustrate, some states have passed specific prohibitions on Internet gambling and/or have prohibited Internet gambling operators from accepting funds from financial intermediaries, others have passed more general prohibitions that

63. See McBurney, supra note 26, at 346 (noting that the Constitution would plainly permit regulating Internet gambling, but the federal government has restrained from exercising its Commerce Clause power to broadly regulate gambling).
64. See Grunfeld, supra note 57, at 445.
65. Id.
67. See Grunfeld, supra note 57, at 468.
68. See, e.g., LA. REV. STAT. §14:90.3 (2007) ("Whoever designs, develops, manages, supervises, maintains, provides, or produces any computer services, computer system, computer network, computer software, or any server providing a Home Page, Web Site, or any other product accessing the Internet, World Wide Web, or any part thereof offering to any client for the primary purpose of the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit.").
69. For example, Oregon has passed a law making the acceptance of credit cards, electronic funds transfers, checks, or any form of financial transaction from a financial intermediary to an online gambling business a Class C felony. OR. REV. STAT. § 167.109 (2005). See also Grunfeld, supra note 57, at 468 n.104 ("State laws can also employ enforcement mechanisms like those in the UIGEA. For example, then New York Attorney General Eliot Spitzer, backed by the threat of litigation, compelled major
potentially encompass Internet gambling, and a few others prohibit the operation of certain types of Internet gambling business. On the other hand, some states have legalized some form of gambling. As will be discussed later, the UIGEA does not make substantive changes to existing state, federal, or tribal laws. Rather, the UIGEA, like other federal gambling laws, functions to protect the states from gamblers who attempt to circumvent state law in interstate and global commerce. State law provides the substantive basis for determining whether Internet gambling transactions are prohibited under the UIGEA, provided the state law does not attempt to regulate foreign commerce.

70. See, e.g., WIS. STAT. § 945.03 (2006) ("Whoever intentionally does any of the following is engaged in commercial gambling and . . . is guilty of a Class I felony: For gain, uses a wire communication facility for the transmission or receipt of information assisting in the placing of a bet or offer to bet on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet."). The Wisconsin statute defines a "wire communication facility" to include "any and all instrumentalities, personnel and services, and among other things the receipt, forwarding or delivery of communications used or useful in the transmission of writings, signs, pictures and sounds of all kinds by means of wire, cable, microwave or other like connection between the points of origin and reception of such transmission." WIS. STAT. § 945.01(6) (2006); see also FLA. STAT. § 849.08 (2007) ("Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree . . . "). The Florida Statute does not define the term "device" under the Florida Statute, so it may include computers, modems and/or gaming software. Many state legislatures also write laws in an expansive manner, allowing the state to prohibit a vast array of gambling activities, potentially including those on the Internet.

71. E.g., SD. CODIFIED LAWS § 22-25A-8 (2007) ("no person may establish a location or site in this state from which to conduct a gambling business on or over the internet or an interactive computer service."); see also OR. REV. STAT. § 167.109 (1)(a)-(d) (2006) ("A person engaged in an Internet gambling business may not knowingly accept, in connection with the participation of another person in unlawful gambling using the Internet: Credit . . . [a]n electronic funds transfer or funds transmitted by or through a money transmission business . . . [a]ny check, draft or similar instrument . . . or [t]he proceeds of any other form of financial transaction that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.").

72. See supra note 57, at 468 n.104 (noting that Nevada and North Dakota "have all taken steps towards legalizing some forms of Internet gambling.").

73. See infra Part II.B and accompanying text.


This note argues that the UIGEA is an effective enforcement mechanism to prohibit channeling funds to illegal, offshore Internet gambling operators. The impact of the bill will return control back to the states, and therefore preserve the sovereignty of each state to properly regulate Internet gambling pursuant to their respective legislature. Part II highlights the origin and history of Internet gambling and explains when, how, and why this industry has experienced an unprecedented growth, with a focus on offshore gambling operators. That section also examines the scope of the UIGEA by clarifying misconceptions, laying out the UIGEA’s goals, and discussing existing federal laws relating to gambling on the Internet. Part III analyzes the effectiveness of the UIGEA, particularly how it complements and/or supplements existing laws in curbing offshore Internet gambling operators and addresses the concerns of commentators, critics, and the like. Part IV proposes future regulations that will augment the effectiveness of the UIGEA and remedial steps financial institutions can implement to identify and block the transfer of funds to prevent “e-wallet” intermediaries and Internet gambling operators from circumventing the law. Lastly, Part V provides a summary and some concluding thoughts.

II. Background on Internet Gambling

A. Origin and History of Internet Gambling

Online gambling officially began on August 18, 1995, when Internet Casinos, Inc. put up the first virtual casino on the Internet with 18 different casino games to wager on.76 The catalyst for the online virtual casino happened in 1994 when the government of the Caribbean twin islands, Antigua and Barbuda (Antigua), passed the

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Free Trade and Processing Zone Act. The Act "created a tax-free zone where industries, including gambling profits, would be tax-free." The cost savings from such favorable tax benefits under Antiguan regulations has lured gambling operators to set up shop in Antigua and other unregulated offshore countries.

In addition, licensing fees in offshore countries, such as Curacao and Antigua are significantly less than the licensing fees in the United States. By locating offshore, Internet gambling companies may avoid liability and jurisdiction under U.S. federal or state laws. The potential upside to setting up lucrative, offshore Internet gambling sites outweighs the opportunity to profit from legalized Internet gambling in the United States. Moreover, an increase in Internet access, particularly in the United States, improvements in software technology that allow for real-time gambling, as well as equipping programs with aesthetically pleasing and user-friendly interfaces, such as hi-tech graphics and sounds, and increased consumer confidence in online financial transactions, have all led to an explosion in offshore Internet gambling participants. In a nutshell, a commentator for BettingMarket.com writes that "rapid advances in technology have unleashed the forces of disintermediation, deconstruction, and deregulation."

For example, with online gambling, the need to visit traditional "brick-and-mortar casinos" decreases because Internet gambling can take place virtually anywhere across the world using any electronic device that offers Internet access. Additionally, Internet gambling operators located offshore do not need to adhere to the stricter state

78. Id.
80. See Lantzer, supra note 5.
81. Id.
82. Id. at 283.
83. Id.
84. Id.
86. Id.
87. See J. Schwartz, supra note 25, at 126 (“Brick-and-mortar casinos” is the common term for traditional physically built casinos or non-Internet casinos.)
88. GAO REPORT, supra note 74, at 6.
regulations faced by brick-and-mortar casinos located in the United States. In fact, most private offshore Internet gambling sites are unregulated. The above mentioned factors have been the major impetus behind the growth of Internet gambling. Consequently, land-based casinos are significantly losing market share in the gambling industry to offshore Internet gambling operators.

As a corollary, the offshore Internet gambling phenomenon has truly revolutionized gambling by allowing gamblers to place wagers on all sorts of games and events from the comfort of their homes. However, the new industry raises a variety of concerns over how the law and regulatory enactments ought to properly deal with Internet gambling and its potential consequences. Allowing offshore gambling operations to go unchecked can have a potentially devastating impact that has already led to many Internet crimes.

For instance, “gambling represents the largest money making business for organized crime” and presents an opportunity for money laundering in the “areas of bookmaking and numbers." Oftentimes organized crime syndicates resort to violence as their preferred tactic for debt collection. Also, due to a lack of accountability, online gambling has led to fraud by both offshore gambling sites and players. Because almost all Internet gambling operations are located offshore it is easy for gambling operators to change, move, or entirely remove sites within a matter of minutes, thus making “it possible for dishonest operators to take credit card numbers and money from deposited accounts and close down.”

Consequently, several websites track Internet gambling operators and analyze their operational credibility. One such site is

89. McBurney, supra note 26, at 353.
90. See IGPA HEARING, supra note 1, at 7.
91. See supra notes 77 - 90 and accompanying text.
92. Liddell, Jr. et al., supra note 5, at 331.
93. NGISC REPORT, supra note 15, at 5-1.
94. Id. at 8-1.
95. Masoud, supra note 9, at 990.
97. Id. at 384.
98. Id. Potential fraud is a legitimate concern among gamblers who fear non-payment of winnings from offshore gambling sites. Such concern is also justified from the other side because online gamblers have sued the credit card companies to prevent enforcement of their online gaming debts.
99. NGISC REPORT, supra note 15, at 5-5.
100. Id.
OnlineCasinoConditions.com, which has logged gambler complaints and created a “blacklist” of offshore Internet gambling sites that have failed to pay out gambling winnings. Further, “global dispersion of Internet gambling operations makes the vigilant regulation of the algorithms of Internet games nearly impossible” giving computer hackers or gambling operators the ability to “tamper with gambling software to manipulate games to their benefit.” On the flip side, online gamblers have sued credit card companies to prevent enforcement of their online gaming debts as illegal contracts. In an effort to gain greater control over illegal gambling operators and to prevent crime related to illegal Internet gambling, the United States enacted the UIGEA.

B. Overview: Unlawful Internet Gambling Enforcement Act of 2006

To comprehend the effectiveness of the UIGEA on Internet gambling, it is critical to understand what the Act actually does and does not do, as well as what its goals are and what it is aimed at preventing. The UIGEA makes it clear that any Internet gambling operator that violates state law is automatically in violation of federal law, regardless of the type of gambling and the mechanism used to supply the activity. The UIGEA, however, makes no significant changes to the current substantive law on Internet gambling. In other words, the UIGEA does not make any gambling activity illegal that was previously legal and does not make any gambling activity

101. OnlineCasinoConditions.com – About Us, http://www.onlinecasinoconditions.com/about.html (OnlineCasinoConditions.com “is an academic, advertising-free website that seeks to help players with a variety of topics and issues related to online gambling.” Its purpose is to facilitate the overall quality of online gambling “threatened by scam operations and rogue online casinos.”) (last visited Aug. 1, 2007).


103. NGISC REPORT, supra note 15, at 5-5.


105. See 31 U.S.C.A. § 5365 (West Supp. 2007) (“In addition to any other remedy under current law, the district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.”).

106. See Id. § 5361(b) (“No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.”).
legal that was previously illegal. In effect, it preserves and facilitates the right of every state to determine and enforce the gambling policies and laws that apply within its borders. The UIGEA is particularly aimed at offshore "fly-by-night" Internet gambling operators that are unlicensed, untaxed, unregulated, and though just a few hours away, are beyond the jurisdictional reach of the United States governmental agencies.

It is important to note that the Act is primarily an enforcement bill that prohibits Internet gambling operators from accepting money related to any online gambling that violates existing federal, state, and/or tribal law. The main goals of the UIGEA are: 1) to cut the money supply from U.S. gamblers to illegal, offshore Internet gambling operators; 2) to return control to the states by allowing each state to decide through their state legislatures if they want to allow gambling within their borders; and 3) to account for new technology as well as to clarify ambiguity in existing laws related to gambling.

1. Lawful Versus Unlawful Internet Gambling

The UIGEA addresses some otherwise unclear points in existing laws, and is informative in defining what constitutes lawful and unlawful Internet gambling. The Act explicitly states that "unlawful Internet gambling" does not include a bet or wager that "is initiated and received or otherwise made exclusively within a single state," so long as it is in accordance with that state's laws, including age and location verifications, and it does not violate any other law that might be applicable. In other words, intrastate online gambling is legal under the UIGEA where a bet is placed, received, and

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108. UIGEA FACT SHEET, supra note 33, at ii-1.
109. IGPA HEARING, supra note 1, at 7 (statement of Bob Goodlatte, Rep. in Cong. from Virginia).
110. D. SCHWARTZ, supra note 46, at 178.
111. UIGEA FACT SHEET, supra note 33, at v-1.
113. IGPA HEARING, supra note 1, at 9 (statement of Bob Goodlatte, Rep. in Cong. from Virginia).
consummated provided it is permitted by that state. The Act also asserts that, under U.S. law, a wager is lawful if the laws of both the customer's place of residence and that of the operator permit it. Furthermore, the UIGEA contains similar definitional language related to "intratribal transactions," allowing gambling transactions between two or more Indian tribes.\textsuperscript{116}

On the other hand, the UIGEA prohibits persons engaged in the betting or wagering business from knowingly accepting credit, electronic funds transfers, checks, or the proceeds of any other form of financial transaction "in connection with the participation of another person in unlawful Internet gambling."\textsuperscript{117} "Unlawful Internet gambling" means to "place, receive, or otherwise knowingly transmit 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 in the State . . . in which the bet or wager is initiated, received, or otherwise made."\textsuperscript{118} However, the UIGEA limits the restriction on an "electronic funding transfer"\textsuperscript{119} to Internet gambling operators and not players.\textsuperscript{120}

2. Criminal and Civil Sanctions and Pending Regulatory Action

Violators of the ban on unlawful "funding transfers" will be fined and/or punished for up to five years in prison.\textsuperscript{121} The court may also issue a "permanent injunction enjoining such persons" from continuing on with anything related to the wagering business including, but not limited to, accepting, placing, and inviting bets or wagers.\textsuperscript{122} Additionally, the federal government or state attorney generals may institute civil suits requesting an issuance of a temporary restraining order or a preliminary and permanent

\begin{itemize}
\item \textsuperscript{116} See 31 U.S.C.A. §5362(10)(C).
\item \textsuperscript{117} Id. §5363.
\item \textsuperscript{118} Id. §5362(10)(A).
\item \textsuperscript{119} See id. § 5362 (11)(B) (The term "electronic fund transfer" means any transfer of funds "which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.").
\item \textsuperscript{120} See Rose, supra note 32, at 539.
\item \textsuperscript{121} 31 U.S.C.A. § 5366.
\item \textsuperscript{122} Id.
\end{itemize}
injunction to prevent the flow of "restricted transactions"\textsuperscript{123} to illegal gambling operators.\textsuperscript{124} The UIGEA also provides regulatory tools, prescribed by the Federal Reserve System Secretary and Board of Governors and the Attorney General within 270 days of enactment of the bill that will require everyone connected with a "designated payment system"\textsuperscript{125} to "identify and block or otherwise prevent or prohibit restricted transactions."\textsuperscript{126} The Act provides federal regulators, such as the Federal Reserve Board, with exclusive regulatory enforcement over financial institutions within the United States.\textsuperscript{127} The Federal Trade Commission (FTC) will enforce regulations on everyone else not subject to jurisdiction by the federal regulators.\textsuperscript{128}

C. Overview: U.S. Federal Laws Relevant to Internet Gambling

In general, gambling regulation is left to the states\textsuperscript{129} pursuant to their powers under the Tenth Amendment.\textsuperscript{130} However, the Commerce Clause of the United States Constitution authorizes the federal government to regulate gambling activity that affects interstate commerce.\textsuperscript{131} Internet gambling that falls within the reach of the Commerce Clause includes bets or wagers placed at a personal computer or any web-enabled device located in a different state or

\textsuperscript{123} See id. § 5362(7) (The term "restricted transaction" means any transmission of money or funds involved with unlawful Internet gambling).

\textsuperscript{124} Id. § 5365.

\textsuperscript{125} Id. § 5362(3) ("Designated payment system" is defined as "any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction."). See also id. § 5362(4) (A "financial transaction provider" is "a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system."). Rose, supra note 32, at 538 (Designated payment system "covers any system used by anyone involved in money transfers, that the federal government determines could be used by illegal gambling.").

\textsuperscript{126} 31 U.S.C.A. § 5364.

\textsuperscript{127} Rose, supra note 32, at 540. See also id. § 5364(e)(1).

\textsuperscript{128} Rose, supra note 32, at 540. See also 31 U.S.C.A. § 5364(e)(2).

\textsuperscript{129} GAO REPORT, supra note 74, at 12.


\textsuperscript{131} U.S. CONST., art. I, § 8, cl. 3 states in relevant part that "[t]he Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."
country than the server that receives the transaction. The Wire Act, the Travel Act, and the Illegal Gambling Business Act are three federal statutes that have the most applicability to Internet gambling. Other federal statutes including the Wagering Paraphernalia Act and the Professional and Amateur Sports Protection Act also relate to Internet gambling operations.

First, the Wire Act prohibits gambling operators from "knowingly receiving or sending certain types of bets or information that assists in placing bets over interstate and international wires." By its plain language, the Wire Act specifically prohibits the interstate transmission of wagers or information enabling wagers "on any sporting event or contest." Second, the Travel Act aims at prohibiting "interstate or foreign travel or use of an interstate facility in furtherance of an unlawful business enterprise." Third, a prima facie case against a gambling operation under the Illegal Gambling Business Act requires the government to establish the following: 1) the gambling operation is in violation of state or local law; 2) it involves five or more persons that either conduct, finance, manage, supervise, direct, or own all or part of the business; and 3) it remains in substantially continuous operation for thirty days or has a gross revenue of $2,000 on any given day. Fourth, the Wagering Paraphernalia Act "criminalize[s] the interstate transportation, except by common carrier, of any record, paraphernalia ... writing, or other device used, or to be used, adapted, devised, or designed for use in bookmaking, wagering pools with respect to sporting events ... or similar game[s]." Finally, Congress enacted the Professional and Amateur Sports Protection Act as the "primary regulatory

132. GAO REPORT, supra note 74, at 12.
134. Id. § 1952.
135. Id. § 1955.
136. GAO REPORT, supra note 74, at 12.
139. Pickens, supra note 130, at 257.
framework for sports wagering activity"145 that specifically prohibits betting on all "competitive games in which amateur or professional athletes participate."146

III. Analysis

A. UIGEA Enforcement Through Existing Laws

As the Act's title suggests, the Unlawful Internet Gambling Enforcement Act is an enforcement bill. The UIGEA creates no purposeful or incidental "loopholes" because the Act enforces only against funding transactions that are already illegal under some other state, federal, or tribal law.147 As the spokesman for Representative James Leach, who sponsored the bill, Gregory Wierzynski says, "[t]his new law gives a new tool to enforce the existing law."148 Because no cases are on point specifying the extent to which many of the existing laws apply to Internet gambling, the best that could be done was to speculate how it applied to the Internet based on a careful interpretation of the relevant statute.149 To rectify this ambiguity, the UIGEA clarifies and updates existing laws related to Internet gambling. Accordingly, an analysis of those existing laws under the new guidelines set forth in the UIGEA is necessary.

1. Closing the Loophole on the Wire Act of 1961

Most often, courts apply the Wire Act of 1961 to prosecute and criminalize the operation of Internet gambling.150 The Act prohibits the knowing use of a wire transmission to transmit bets or information assisting in the placing of bets,151 but does not make placing a bet illegal.152 Recreational or casual bettors cannot be

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147. UIGEA FACT SHEET, supra note 33, at v-1.
149. Grunfeld, supra note 57, at 456.
prosecuted under the Wire Act, though, such bettors would be within the jurisdiction of, and subject to prosecution in accordance with, their state's gambling laws. Although the Wire Act has been used to prosecute Internet gambling operators, the Internet raises the issue whether it is a "wire communication facility" within the meaning of the statute. In United States v. Cohen, the Second Circuit addressed this issue and extended the illegal use of a wire communication for gambling-related information to cover Internet communication. Thus, if an Internet gambling operator in any country receives a bet transmitted by an individual located in the U.S. that foreign entity would likely be in violation of the Wire Act.

Nonetheless, ambiguity surrounds the Wire Act's applicability to many other forms of online gambling. It is unclear whether the Wire Act's restrictive effect on Internet gambling prohibits all forms of interstate betting and gambling. The court in In re Mastercard held that a plain reading of the statutory language of the Wire Act is unequivocal and requires that the object of the gambling be a "sports event or contest." While these two cases are unclear in addressing all forms of Internet gambling, it is certain that the Wire Act clearly prohibits the use of the Internet for transmission of sports bets or

153. See 18 U.S.C. § 1084(a); see also United States v. Baborian, 528 F. Supp. 324, 328-29 (D.C.R.I. 1981) (finding that "Congress never intended to include a social bettor within the prohibition of the statute and that Congress did not contemplate prohibiting the activities of mere bettors").

154. See IGPA HEARING, supra note 1, at 77-78 (This is consistent with the theme that the states are the primary regulators of gambling within their borders and that such bettors will be dealt with by the state in accordance with their laws on gambling).

155. See 18 U.S.C. § 1081 (2000) (A "wire communication facility" is defined as "any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.").

156. Pickens, supra note 130, at 257.

157. Id.; see, e.g., Cohen, 260 F.3d at 78 (The court affirmed the conviction of Jay Cohen, an Antigua bookmaker who accepted wagers from New York, under The Wire Act for using both the telephone and Internet for receiving wagers. The court noted that "if a person on an internet device or a telephone said or signaled that the bet was accepted, this was the transmission of a bet within the meaning of Section 1084 [Wire Act]."); see also In re Mastercard, 313 F.3d 257, 262-63 (5th Cir. 2002) (holding that The Wire Act prohibits sports gambling on the Internet).

158. GAO REPORT, supra note 74, at 12.


wagers or information assisting in the placement of such bets or wagers.\textsuperscript{162} The Cohen court did not examine the issue of non-sports-related Internet gambling. However, such gambling is not prohibited by the Wire Act according to the Fifth Circuit under Mastercard.\textsuperscript{163}

There is also debate over the language of the Wire Act, particularly whether the phrase “transmission of a wire communication” means sending and/or receiving information over the Internet.\textsuperscript{164} The interpretation of the term “transmission” has led to a split of authority where some courts have held that “transmission” means both receiving and sending information, while other courts have interpreted the term to solely mean sending.\textsuperscript{165}

The United States Supreme Court affirmed the judgment of the United States District Court for the Northern District of Illinois in \textit{Telephone News System, Inc. v. Ill. Bell Tel. Co.}, which rejected the theory that “transmission” means sending or receiving information in the context of a telephone service company supplying horse racing information to customers’ calls on the premise that it was not in the “business of betting or wagering.”\textsuperscript{166} In the same sense, the Seventh Circuit Court in \textit{United States v. Stonehouse} held that the meaning of “transmission” as used in the Wire Act is limited to sending information only.\textsuperscript{167} While it appears that \textit{Stonehouse} is following the precedent in \textit{Telephone News System, Inc.} with respect to the meaning of transmission,\textsuperscript{168} the two cases are distinguishable. In \textit{Stonehouse}, the defendants operated a tavern that regularly accepted sports wagers via a ticker tape,\textsuperscript{169} whereas the court determined that the defendants in \textit{Telephone News System, Inc.} were not engaged in a

\begin{itemize}
\item \textsuperscript{162} Pope, \textit{supra} note 5, at 910.
\item \textsuperscript{163} \textit{See In re Mastercard}, 313 F.3d 257, 263 (5th Cir. 2002) (“the Wire Act does not prohibit non-sports internet gambling”).
\item \textsuperscript{164} \textit{GAO REPORT, supra} note 74, at 12.
\item \textsuperscript{165} \textit{Id.} at 12-13.
\item \textsuperscript{166} \textit{Tel. News Sys., Inc. v. Ill. Bell Tel. Co.}, 220 F. Supp. 621, 631 (N.D. Ill. 1963), \textit{aff’d} 376 U.S. 782 (1964) (holding that the owners of a telephone service company that gave recorded horse race results over the telephone when the advertised telephone number was dialed were not “engaged in the business of betting or wagering” within subsection (a) of the Wire Act, which forbids using wire communications facilities to transmit bets or wagers or information assisting in the placing of bets or wagers on sporting events or contests).
\item \textsuperscript{167} \textit{U.S. v. Stonehouse}, 452 F.2d 455, 456-57 (7th Cir. 1971) (holding that the Wire Act does not prohibit the receipt of information in connection with a bet or wager and that the Act is limited to sending only).
\item \textsuperscript{168} \textit{See id.} at 457.
\item \textsuperscript{169} \textit{Id.} at 456.
\end{itemize}
gambling business. In more recent decisions by the Ninth Circuit, in United States v. Pezzino, and in the Eighth Circuit, in United States v. Reeder, both courts held that “transmission” encompasses not only sending, but also the receipt of information.

These cases clarify that a betting or wagering business that sends information in connection with a bet or wager violates the Wire Act. As noted above, however, the critical issue leading to the circuit split hinges on the interpretation of “transmission.” The Seventh Circuit’s reasoning in Stonehouse for holding that receiving transmissions was not prohibited by law was due to the different language used in the Wire Act, which did not explicitly use the words “transmitting or receiving” as it did “in paragraph (d)” in 18 U.S.C. section 1084. In addressing this issue, the UIGEA makes it unlawful “to place, receive, or otherwise knowingly transmit a bet or wager by any means,” including the use of any wire communication facility and the Internet. In other words, the UIGEA makes receiving information by a betting or wagering operation illegal and within the purview of the Wire Act. Thus, clarification by the UIGEA should sound the death knell to the split of authority over the meaning of what constitutes transmission.

Despite these ambiguities, the Department of Justice (DOJ) contends it can prosecute gambling operators under the Wire Act whether the gambling occurs over the telephone, over the Internet, or in any other way, even though the Act was not designed with Internet gambling in mind. But, the DOJ has not always enforced this policy. The DOJ, however, has acknowledged that there is

171. In Pezzino, the court held that “the statute [Wire Act] forbids the use of interstate facilities for sending or receiving wagering information.” 535 F.2d 483, 484 (9th Cir. 1976), cert. denied, 429 U.S. 839 (1976). Likewise, in Reeder, the court concluded that under the Wire Act the “prevailing view” under the Wire Act is that it covers the use of wire communication facilities by those in the gambling business, whether sending, receiving, or both is involved despite the contention that “transmission” as used in the Act was not intended to encompass the reception of information. 614 F.2d 1179, 1184-85 (8th Cir. 1980).
172. See supra notes 164 - 171 and accompanying text.
173. 452 F.2d at 457-58.
175. IGPA HEARING, supra note 1, at 2 (statement of Robert C. Scott, a Rep. in Cong. from Virginia).
176. Gottfried, supra note 159, at ¶ 98.
177. IGPA HEARING, supra note 1, at 2 (statement of Robert C. Scott, a Rep. in Cong. from Virginia).
confusion as to whether the Wire Act only applies to sports betting, and that Congress should, therefore, amend the law to explicitly cover all forms of betting and gambling. Moreover, as wireless technology becomes more affordable for an increasing number of consumers, the Wire Act probably will no longer apply to the rapidly growing Internet market. In fact, many commentators say that the Wire Act does not cover wireless Internet transmissions altogether. The effects of several failed legislative attempts to specifically prohibit Internet gambling and the ineffectiveness of current federal laws has finally provoked legislation to enact a bill that clearly puts a ban on funds going to illegal offshore Internet operators.

Because federal law was unclear as to whether or not Internet gambling was prohibited by the Wire Act, Congress promulgated the UIGEA. The UIGEA “clarifies the law in this area by prohibiting Internet gambling and updates existing language to bar use of new technologies such as wireless access to gambling sites on the Internet, which were never envisioned when the Wire Act was drafted in 1961.” It also clarifies federal law prohibiting the processing of

http://www.gamblingandthelaw.com/antigua.html (noting that the Department of Justice has never prosecuted “state-authorized off-track betting operations that accept wagers from across state lines by phone, as in New York, or by both phone and the Internet, as in Pennsylvania.”).


181. See Beau Thompson, Internet Gambling, 2 N.C. J.L. & TECH. 81, 91 (2001) (arguing that “statutory language excludes the newer technologies that permit wireless transmission of information”); see also Holahan, supra note 10; Anthony N. Cabot and Robert D. Faiss, Gaming Law Symposium: Sports Gambling in the Cyberspace Era, 5 Chap. L. Rev. 1, 20 (2002) (noting that the Wire Act did not have Internet gambling in mind. As such, other technologies exist such as radio and satellite communications that do not fall within the purview of the Wire Act). Nonetheless, a reasonable argument could be made that these new technologies would still be within the reach of the Wire Act because it is inevitable that connections to the Internet backbone still depend on wires whether it be through a T1, T3, or DSL line, fiber optic, or simply through a coax cable.


184. IGPA HEARING, supra note 1, at 1 (statement by Howard Coble, a Rep. in Cong. from North Carolina, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security).

185. Id. (quoting Howard Coble, a Rep. in Cong. from North Carolina, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security). See also 18 U.S.C.A. § 5362(10)(A) (West Supp. 2007) (“The term ‘unlawful Internet gambling’ means to place,
financial transactions related to unlawful online gambling, and in some
cases it will force Internet service providers to block access to,
and remove links from, offshore Internet gambling sites. In fact,
two of the most popular Internet search portals, Google and Yahoo!,
no longer accept advertising for online casinos and sportsbooks. In
an effort to avoid the possibility of federal prosecution, Yahoo! stated
that “a lack of clarity in the environment made gambling advertising
too risky.”

The UIGEA also bans the use of credit cards, checks, and
electronic transfers to place bets on Internet gambling websites,
effectively preventing U.S. banks and credit card companies from
doing business with these online gambling operators. Within the
reach of the statute is a betting or wagering business that provides
“any instructions or information pertaining to the establishment or
movement of funds by the bettor or customer in, to, or from an
account with the business of betting or wagering.”

Most importantly, the UIGEA clarifies and redefines the meaning of a “bet
or wager.” Under the new definition a “bet or wager” is “the 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,” and
therefore encompasses all gambling activities, with a few exceptions.
Professor Cory Aronovitz notes that because Congress has eliminated ambiguity from U.S. laws, it will be difficult for attorneys to “make a good faith argument that only sports books were illegal” because under the new definition “it’s hard for me to say poker or traditional casino games do not fit within a bet or a wager.” Moreover, “no federal or state court has ever squarely ruled that poker is a game of skill in the legal—51%—sense.”

2. UIGEA and Other Laws Relevant to Internet Gambling: The Travel Act and the Illegal Gambling Business Act

The Travel Act, enacted in 1961, imposes criminal penalties for those who utilize interstate or foreign commerce with the intent to distribute the proceeds of any unlawful activity. Pursuant to the Travel Act, the term “unlawful activity” covers any business entity that involves gambling. Courts have held that the use of “the mail, telephone or telegraph, newspapers, credit cards, and tickertapes is sufficient to establish that a defendant used a facility of interstate commerce to further an unlawful activity in violation of the Travel Act.” However, neither the statute nor case law expressly mentions the Internet as covered under the Travel Act. The UIGEA explicitly clarifies “unlawful Internet gambling” that can be incorporated in the interpretation of the Travel Act. The Internet thus constitutes an interstate facility in which gambling over the Internet violates the Travel Act.

Likewise, operating a gambling website would violate the Illegal Gambling Business Act, provided that five or more people involved in any way with the gambling business violate a state gambling law for

knowledge and skill of participants and are based on accumulated statistical results of the performance of individual athletes, and winning outcomes are not based on the score, point-spread or any performance of a single real-world individual or team.”). The exemption of state-run lotteries, online fantasy sports games, intrastate gambling, gambling on Native American territories, and interstate horse racing is consistent with the premise of the UIGEA’s function as an enforcement bill of existing federal, state, and/or tribal laws.

195. Rodefer, supra note 144.
197. Id. § 1952(b)(1)(i).
198. Rodefer, supra note 144.
30 days or has gross revenues of $2,000 in any single day. The five people do not need to be directly linked to the gambling operation, but must only be considered "necessary and helpful" to the operation. Thus, computer engineers, accountants, and owners could all be included as "necessary and helpful" in the operation of an Internet gambling website.

B. Offshore to Offline: UIGEA Curbing Effect on the Internet Gambling Industry

The UIGEA has effectively curbed Internet gambling and will continue to have a ripple affect across the entire Internet gambling industry. With the passage of the UIGEA, the process of funnelling money into online poker or gambling websites has suddenly become very difficult. The basic thrust of the law is to cut off the flow of funds from U.S. gamblers to Internet gambling websites, especially to the offshore operators who are the UIGEA's primary target. By cutting off the money supply, the UIGEA prevents Internet gambling operators from "flouting federal and state gambling laws" because most are located overseas, beyond U.S. jurisdiction and the prosecutorial reach of American law enforcement agencies.

The enactment of the UIGEA sent shockwaves throughout the Internet gambling industry. Immediately after its passage, the best known and most powerful name in online poker, Partypoker.com, decided to exit the U.S. market, and many other sites eventually followed suit. More than 250 sites, including six from Casino City's Top 10 most popular sites, have already announced that they will stop accepting bets from U.S. players in response to the passage of the UIGEA.

201. GAO REPORT, supra note 74, at 14.
202. Id.
204. UIGEA FACT SHEET, supra note 33, at i-1.
206. Blount, supra note 203.
207. Frese. supra note 8, at 550 ("Casino City is a Louisiana corporation that disseminates gambling information, news, strategies, and tips on its websites.").
The biggest blow came when Pinnacle Sports, "probably the biggest and best bookmaking operation in the world—and maybe in the history of the world"—withdrew from the U.S. market. Other industry leaders including 888 Holdings, BetOnSports, PartyGaming and SportingBet also halted U.S. operations. PartyGaming.com, the world's largest online poker business up until the passage of the UIGEA "with 62% of its customers in the U.S., said the [UIGEA] had made the stakes too high to continue." After considering extensive legal consultation, PartyGaming concluded that the new legislation makes it practically impossible to provide U.S. residents with access to its real money poker and gaming sites. Many other online gambling sites have reached similar conclusions, which are likely to affect both the scale and growth of the online gambling sector in the United States.

However, some popular sites such as PokerStars, AbsolutePoker, UltimateBest and FullTiltPoker still offer services to U.S. players. But this may not be for long. This is because those that remain will likely follow suit once regulations under the UIGEA are prescribed or, in the meantime, drastically cut down their U.S. operations. For example, PokerStars, which operates one of the largest online gaming sites in the United States, has drastically cut down the options in which a player can make a deposit onto its site. Although PokerStars advertises 17 deposit options, the only viable option available to U.S. customers is to use the service of a company called ePassporte. However, it comes at "meaty" price. In addition to

209. Beyer, supra note 205, at E01.
211. PartyGaming – About Us, http://www.partygaming.com/about_us/ ("Founded in 1997, PartyGaming Plc is the world’s leading online gaming company and owns and operates PartyPoker.com, the world’s largest online poker room. The Group is also the world’s largest online casino and operates PartyCasino.com and StarluckCasino Online.") (last visited Aug. 1, 2007).
212. Nichols, supra note 148.
214. Global Online Gaming Sector, supra note 213.
216. Id.
218. Blount, supra note 203.
ePassporte’s sign up and withdrawal fees, a hefty surcharge of five percent is deducted on every deposit, which means that for every $1,000 deposit, $50 will be taken out.\textsuperscript{220} But even this alternative and limited option to transfer funds to illegal gambling operators will likely cease to exist soon. Gamblers will realize this is not an economically wise decision, considering they are giving away a substantial amount of money for next to nothing in return.

Moreover, these gambling operators that are taking bets or wagers from U.S.-based players are “already acting illegally,” and will have “nine months to update their system to take account of the bill” before the law and regulatory enactments go into effect.\textsuperscript{221} Several arrests have already been made that include both executives of Internet gambling operators and financial institutions. Peter Dicks, former chairman of Sportingbet, was arrested when he landed at Kennedy Airport and David Caruthers, CEO of BetOnSports, was taken into custody in Texas during a layover.\textsuperscript{222} In January of this year, the two founders of Neteller, the world’s largest online payment processor for Internet gamblers that, until then, continued to operate in the U.S., were arrested.\textsuperscript{223} The federal governmental agencies have sent a message to the Internet gambling industry that they are ready to crack down on any violators. A commentator concluded that “the best advice would be to give the U.S. a wide [berth] once and for all. To do otherwise would be to antagonise the U.S. authorities, and to further increase the risk of arrest. And that is something that beleagured ordinary investors can live without.”\textsuperscript{224} Congress has effectively halted the online gambling scene, which quickly lost much of its steam particularly online poker.\textsuperscript{225} Clearly, the UIGEA has had an immediate and severe impact on the Internet gambling industry.

\textsuperscript{219} Id.

\textsuperscript{220} Id.; see also Personal Accounts - ePassporte, https://www.epassporte.com/secure/jsp/PersonalAccounts.jsp.

\textsuperscript{221} Nichols, supra note 148 (quoting Gregory Wierzynski, spokesman for the bill’s sponsor in Cong., Rep. James Leach of Iowa).

\textsuperscript{222} Id.; see also Eric Pfanner, Online-Gambling Shares Plunge on Passage of U.S. Crackdown Law, N.Y. TIMES, Oct. 3, 2006, at 3.


\textsuperscript{225} Blount. supra note 203.
Reaction to the UIGEA has also had an immediate financial impact on the Internet gambling industry that caused stocks to lose as much as 50 percent of their value if not more in a single day. Colin Morton, investment director at UK-based Rensburg stated that "[o]ver 90% of the [Internet gambling] companies with US [sic] business have closed down and share prices have been annihilated." PartyGaming, the market leader, lost three-quarters of its revenues as a result of its U.S. pull-out. Other market leaders posted similar losses which "tells the UIGEA tale" including 888 Holdings that lost a net gaming revenue of 39 percent, with a 43 percent drop in online poker revenue in the last three months of 2006. Following PartyGaming's announcement to pull-out, the entire Internet gambling operators that are publicly traded on the London Stock Exchange followed. Those publicly listed companies lost a significant portion of their revenues amounting to "$4 billion in value those first few days" alone. While many withdrew their U.S. operations, others sold their U.S. business. The British-based company Sportingbet sold its U.S. business for a nominal fee of $1 after taking a "comprehensive legal and strategic review" of the new law.

Not only has the UIGEA made it illegal for U.S. banking institutions to process payments to online gambling sites based in other countries, but it has also clearly affected international banking intuitions as well. The two biggest Internet financial clearinghouses based in the United Kingdom, Neteller and FirePay, have immediately blocked the processing of online gambling transactions in the United States as their positions in the market were no longer sustainable following the passage of the UIGEA.

226. UIGEA FACT SHEET, supra note 33, at ii-1.
228. Blitz, supra note 223.
231. Id.
233. Jessica Centers, All in; Chuck Humphrey Has Based His Career on Gambling, Now He's Calling the Bet on Online Fantasy-Sports Competitions, DENVER WESTWORD, Dec. 14, 2006.
C. UIGEA and the Critics

Many commentators criticize that the UIGEA is ineffective, arguing that the online gambling operators can avoid the application of the ban on fund transfer by accepting funds through online financial intermediary e-wallets like Neteller and FirePay. These critics argue that the UIGEA may have a loophole because these e-wallet businesses operating outside the U.S. are willing to be the middleman allowing American gamblers to deposit, withdraw, and transfer funds to any Internet gambling site that supports their online payment system. Others argue that e-wallets allow anyone with a valid e-mail identity to transfer money in an unregulated environment and could encourage net-based gambling. The main reasons for these commentators' critiques are that these e-wallets or intermediaries are located overseas and are not subject to U.S. jurisdiction, are not financial institutions, and are not subject to direct regulation by the Federal Reserve Board or any other U.S. governmental agencies. Other commentators argue that once the money leaves the bank account for a Neteller or FirePay e-wallet, there is no way to know how that money is spent. However, these commentators are wrong. The UIGEA was promulgated specifically to address these issues that attempt to circumvent the law.

To begin with, section 5362(4) of the UIGEA provides that a "financial transaction provider" includes any "international . . . payment network utilized to effect a . . . electronic fund transfer . . ." Clearly, any international e-wallet is within the scope of the statute.

235. Humphrey, supra note 224.
236. About the NETeller e-wallet. http://web.neteller.com/content/en/about_index.htm ("A NETELLER e-wallet account can be accessed anywhere, anytime, making it the most convenient way to transact online. With simple and secure funding options, an e-wallet account lets you transfer money with thousands of online merchants, and your friends and family.") (last visited Aug. 1, 2007).
237. About FirePay, http://www.firepay.com/_about/about0.asp ("A FirePay account is a Web-based account that works like a debit card—you fund your FirePay account directly from your bank account, and then use your account to purchase goods and services online.") (last visited Aug. 1, 2007).
240. Humphrey, supra note 224.
Moreover, the UIGEA grants the Federal Trade Commission prophylactic rulemaking authority and enforcement powers to adopt policies and procedures designed to prevent the acceptance of financial transactions, including any electronic fund transfer or funds transmitted by a money-transmitting business or the proceeds of any other form of financial transaction, involving a “financial intermediary on behalf of or for the benefit of such other person.”

Further, the UIGEA “allows federal and state law enforcement officials to obtain judicial orders against Internet intermediaries to withdraw communications facilities used to facilitate Internet gambling.” Chuck Humphrey, a legal commentator and practicing attorney specializing in gambling law, states that “[i]t is a legal maxim that a law cannot be circumvented by doing indirectly that which cannot be done directly.” Thus, an Internet intermediary (e-wallet), as well as the gambling operator that attempts to circumvent the law, would be in violation of the Act if either sends and/or receives funds in connection with a bet or wager even if the statute did not apply to them directly.

Nonetheless, one legal commentator and professor contends that “[i]t is extremely doubtful whether the FTC will ever try to do anything about the Netellers of the world, who are beyond regular U.S. regulatory control.” This argument, however, is questionable. Although the FTC may not have been directly linked to the indictment of the co-founders for Neteller, the largest offshore gaming transaction payment processing concern in the world for Internet gamblers, other U.S. governmental agencies are willing to enforce the ban on funding illegal gambling. Further, other popular and established non-U.S. online payment processors, including Firepay, Citadel, and InstaDebit, no longer process online gambling transactions, while others such as Click2Pay have “pushed the pause button on allowing new American accounts” pending regulation by the UIGEA. Most notably, PayPal, the world’s biggest online

243. Humphrey, supra note 224.
246. Humphrey, supra note 224.
247. Rose, supra note 32, at 540.
248. Blitz, supra note 223. See also Pajich, supra note 223.
249. Todd, supra note 217.
payment processor, has already declared that it has banned all gambling transactions.\textsuperscript{250}

Even assuming the FTC does not go after the "Netellers of the world," the United States Attorney's Office has brought charges against online payment processors in violation of the USA PATRIOT Act.\textsuperscript{251} For instance, PayPal paid $10 million in a settlement agreement with the United States Attorney's Office for the Eastern District of Missouri on allegations of transferring funds to illegal offshore gambling sites in violation of the USA PATRIOT Act.\textsuperscript{252} The USA PATRIOT Act permits the United States to seize accounts in offshore banks where there is evidence of illegal gambling activity even though the act itself does not include this express statutory language.\textsuperscript{253} Additionally, the USA PATRIOT Act and its regulations require U.S. banks to take reasonable measures to ensure that any correspondent account that they establish, maintain, administer, or manage for a foreign bank is not being used by the foreign bank to provide banking services indirectly to a foreign gambling site for the purpose of channeling money.\textsuperscript{254}

Despite this, Professor Rose poses the following two questions: 1) "Will federal regulators prohibit U.S. banks from sending funds to Neteller?" and 2) "Would they then prohibit U.S. banks from sending funds to an overseas bank, which forwards the money to Neteller?"\textsuperscript{255} Others commentators argue that even if Neteller and other e-wallets decline to accept gambling transactions, other third-party payment processors will quickly fill the "vacuum" left by them.\textsuperscript{256} While these are legitimate inquiries, the UIGEA, through the USA PATRIOT Act, can freeze the correspondent accounts within foreign banks that the U.S. serves.\textsuperscript{257} This certainly can impact offshore internet gambling by inducing a fear such that overseas banks and online payment processors will refuse to deal with online gambling

\textsuperscript{250} Frese, supra note 8, at 557, n.53.
\textsuperscript{251} Masoud, supra note 9, at 1007.
\textsuperscript{252} Id.
\textsuperscript{253} See, e.g., USA PATRIOT Act, Title III, § 377, Pub. L. No. 107-56, 115 Stat. 272, 342 (2001) ("Grants the United States extraterritorial jurisdiction where: (1) an offense committed outside the United States involves an access device issued, owned, managed, or controlled by a financial institution . . . .").
\textsuperscript{255} Rose, supra note 32, at 539.
\textsuperscript{257} Masoud, supra note 9, at 1006-07.
operators. However, the critical question should be “[w]ill players’ appetites for funding accounts dry up if there is a 10-day or longer wait to put money in accounts?” The likely answer is that players, even the most compulsive gamblers, will be unwilling to wait, considering that the premise behind online gambling is the ability to play in real-time. Further, most gamblers disfavor this method because of the “effort involved and the time lag in clearing and posting funds to the bettors’ accounts.” Most gamblers, if not all, “will just not jump through the hoops necessary to find a way around the ban on U.S. financial institutions facilitating money transfers,” let alone pay the fees associated with depositing and withdrawing funds to and from online intermediaries and/or foreign bank accounts. After all, the house has an edge on every gambling game. Keeping that in mind, the house’s favor minimizes or even eliminates a gambler’s return on his or her bet or wager, thus defeating the purpose of gambling.

Other concerns were voiced by the banking industry over whether compliance with the added regulation will justify the time and expense required by banks in monitoring Internet gambling transactions and that the burden will drain the limited resources currently engaged in complying with anti-terrorism and anti-money laundering regulations. Although a valid concern, the UIGEA’s statutory language specifically addresses these concerns such that regulation of most payment systems will not involve new technology or unreasonable expenses. For example, the credit card industry, including American Express and Discover and other commonly used credit card companies such as MBNA, Capital One, and Providian Financial, already have the technology in place to block Internet gambling transactions. The same is true for most banks and financial institutions, including Bank of America, Citibank, and Wells Fargo. These banks currently have procedures for blocking fund transfers and restricting online gambling transactions through the use

258. Id. at 1007.
259. Humphrey, supra note 194.
260. Id.
261. Id.
262. IGPA HEARING, supra note 1, at 64 (statement of Samuel Vallandingham, Vice President and Chief Information Officer, The First State Bank).
263. UIGEA FACT SHEET, supra note 33, at i-i.
264. Gottfried, supra note 159, at ¶ 86.
265. Frese, supra note 8, at 556.
266. Weinberg, supra note 7, at 311. See also IGPA Hearing, supra note 1, at 4.
267. Frese, supra note 8, at 556.
Moreover, the express language of the UIGEA instructs the Federal Reserve System to “exempt certain restricted transactions or designated payment system . . . not reasonably practical to identify and block.” Thus, the concern associated with compliance prescribed by the UIGEA is alleviated where such expenses would be impractical.

IV. Proposals For Pending UIGEA Regulations

The UIGEA instructs the Federal Reserve System (comprised of the Secretary of Treasury and Federal Reserve Board), in consultation with the Attorney General, to prescribe regulations within 270 days from the date the UIGEA was enacted into law that requires payment systems and participants to identify and block or otherwise prohibit restricted transactions to Internet gambling sites through various policies and procedures. Under these guidelines, the regulations should go into effect by the end of 2007, though, there is no penalty if the regulations are not implemented on a timely basis. In fact, the 270 days have passed since the enactment of the UIGEA and the regulations have yet to be published. However, the Federal Reserve System, in consultation with the DOJ, anticipates that the “proposed regulation will be published in the Federal Register for public comment in the near future.” In reality, prescribing regulations can take a long time—it must be submitted for comment, redrafted, then resubmitted for final comments, and only then can they be printed in the Federal Register—before they become enforceable and have the full force of law. At any rate, the long-

268. Weinberg, supra note 7, at 297.
270. See id. § 5364; see also Robins, supra note 112.
272. See, e.g., email response from JPD (Board Staff on the Federal Reserve System) on behalf of Chairman Ben Bernanke regarding the timeline when the regulations will be put in place for the UIGEA (“[T]he Federal Reserve and the Department of the Treasury are working actively on a proposed rule to be published soon in the Federal Register. The agencies are carefully considering a wide range of methods for preventing transactions related to unlawful Internet gambling in order to determine the methods that best address this goal. In addition, members of the public, including financial institutions and other interested parties, will be invited to submit comments on all aspects of the proposed rule, including the feasibility and effectiveness of the proposed rule’s non-exclusive examples of policies and procedures reasonably designed to prevent transactions prohibited by the act, as well as any additional or alternative methods that could address the act’s goal.”). http://www.compatiblepoker.com/When+Will+the+UIGEA+be+Enforced%3F++FRB+Answers+Back.art.htm (last visited Sept. 1, 2007).
term effectiveness of the UIGEA will rest primarily on the strength of these regulations in curbing offshore Internet gambling operators.

As a first step, regulations must require everyone connected with a "designated payment system" to identify and block all restricted transactions by expanding the credit card merchant code "7995" used to identify gambling operators to all fund transfers.273 This would allow payment systems, particularly international systems to systematically deny authorization between an Internet gambling operator and a customer with a U.S. bank account.274 The goal is to identify the payee as an Internet gambling operator to prevent the transferring of funds for unlawful gambling.275 Although credit cards are the primary means for gamblers to transfer funds to overseas gambling operators, some argue these blocking policies are not completely effective.276 Internet gambling operators have attempted to disguise their transactions by: 1) using another merchant’s category code and paying that merchant a percentage of the submitted transactions; or 2) deliberately miscoding a transaction; or 3) allowing a merchant to use a secondary code where the merchant has more than one business in order to disguise the Internet gambling transaction.277 The best way to eliminate these disguised transactions is to "create a presumption in the regulations that domestic gambling businesses are legal" so that financial institutions only need to know the country where the merchant operates or where the financial intermediary is located.278 Such a presumption would be necessary because issuing banks cannot determine whether credit card funds are being used for Internet gambling as it passes through foreign e-

273 A “merchant code” (or merchant category code) is a four-digit number assigned by the bankcard industry to classify and identify suppliers into market segments according to their line of business determined by the products and/or services they provide. The merchant code is assigned by the Acquiring financial institution when a supplier first begins accepting credit card payments. There are approximately 600 merchant codes that denote various types of business. For example the merchant code “7995” is assigned to a supplier in the business of betting including casino gambling, lottery tickets, and off-track betting and wagers. See Merchant Category Codes for IRS Form 1099-MISC Reporting, http://usa.visa.com/download/corporate/resources/mcc_booklet.pdf (last visited Sept. 30, 2007); see also Visa Merchant Category Classification (MCC) Codes Directory, http://www.usda.gov/procurement/card/card_x/mcc.pdf (last visited Sept. 30, 2007).


275. UIGEA FACT SHEET, supra note 33, at i-1.

276. Id.

277. Weinberg, supra note 7, at 297.

278. GAO REPORT, supra note 74, at 26-27.

279. UIGEA FACT SHEET, supra note 33, at i-2.
wallets. Ultimately, this will achieve the goal of identifying and targeting offshore operators who are beyond U.S. jurisdiction and allow law enforcement agencies to prosecute or bring civil actions against a domestic business that is breaking the law.

Additionally, the United States government should put pressure on overseas governments to regulate their Internet gambling operators and seek cooperation by foreign governments in identifying whether online gambling operations are being used to commit crimes. Whether foreign governments would be willing to cooperate and prosecute gambling operations remains questionable, particularly in those countries that allow some form of online gambling. Another factor to consider is whether the U.S. has diplomatic relations with countries that harbor and provide a safe-haven for Internet gambling operators, especially countries like Antigua that provide tax incentives and encourage such operations. For these reasons it would be more effective and a viable option for the U.S. to encourage regulations of Internet gambling operators to meet its objective since many countries already have regulations in place to supervise their gambling industry. For example, the first country to institute strict regulation was Belize, which operates in compliance with the Computer Wagering Act of 1995. The Act creates a Computer Wagering Licensing Board whose members supervise the gambling industry and protect the interests of users of their gaming sites, in addition to requiring an operator to post a bond and obtain a gaming license. Other countries that regulate their Internet gaming operators include the United Kingdom and Australia. The United Kingdom uses special age verification software, records all bets, places caps on wagers, and is subject to routine audits for fraud or money laundering. By using these countries as examples, the U.S. could achieve their objective in preventing fraud, money laundering, and crime, while allowing each country to retain its sovereign rights to decide its own online gambling policies.

Finally, “to ensure uniform compliance by offshore e-wallets, the regulations will need to block all payments from U.S. financial systems to any offshore e-wallets that refuse to abide by U.S. law for

280. See GAO REPORT, supra note 74, at 25.
281. UIGEA FACT SHEET, supra note 33, at i-2.
282. Andrle, supra note 150, at 1417.
283. Id.
284. IGPA HEARING, supra note 1, at 91.
285. Id.
their American customers.\textsuperscript{286} Enforcement of this regulation will be critical because electronic money can be encrypted at a level that makes it completely anonymous and impossible for the government to prevent Americans from gambling via the Internet.\textsuperscript{287} Similarly, foreign e-wallets can easily commingle funds for gambling transactions with other, legal transactions, thus making it very difficult to monitor and trace funds used for illegitimate purposes.\textsuperscript{288}

V. Conclusion

The UIGEA has been a tremendous success in cracking down on Internet gambling, particularly offshore operators. Since the introduction of the UIGEA, the entire landscape of the online gambling and poker industry has and will continue to forever change. As there is no perfect system, the UIGEA will not completely eliminate all forms of Internet gambling. However, it has proven thus far to have an effective and immediate impact on curbing it. It should be noted, though, that while the UIGEA has been an effective enforcement mechanism in banning funds to offshore Internet gambling operators, the key to it being wholly effective lies in the strength of the regulations to be prescribed by the Federal Reserve System and Attorney General.

The UIGEA takes a practical and economical approach to curbing Internet gambling. Banning Internet companies would have been futile since most of them are located overseas. Likewise, it would have been equally futile, not to mention impractical and infeasible, to go after each individual gambler. Perhaps the best approach is to eliminate the mechanism that drives and supplies these illegal gambling operators: the payment channels. Simply put, one cannot exist without the other. The UIGEA applies this conjectural theory. By doing so, the UIGEA effectively chokes off the money supply from U.S. gamblers to illegal gambling operators, specifically by closing off the U.S. market to those unregulated offshore Internet gaming websites. Ultimately, this furthers the UIGEA’s objective in curbing illegal Internet gambling by: 1) eliminating the mechanism in which money is transferred to these sites and 2) targeting the offshore gambling operators and not the millions of players, which would make the law nearly impossible to enforce.

\textsuperscript{286} UIGEA FACT SHEET, supra note 33, at i-1.
\textsuperscript{287} Weinberg, supra note 7, at 299.
\textsuperscript{288} See GAO REPORT, supra note 74, at 25.
Furthermore, the UIGEA criminalizes a gambling business, making it a federal felony if such a business accepts any financial instrument related to unlawful Internet gambling. Those operators that violate the UIGEA would be subject to criminal penalties that include a fine in “an amount up to $500,000 and/or imprisonment for up to five years.” Financial institutions that are in violation of the Act once the regulations are in place “would be subject to the enforcement remedies under Section 8 of the Federal Deposit Insurance Act, 12 U.S.C. § 1818, such as a civil money penalty or cease and desist order” and, if convicted, its license or charter may be revoked. These heightened penalties serve as a strong incentive for offshore gambling operators to withdraw their U.S. operations and for financial institutions to take remedial steps prescribed by the Federal Reserve System to identify and block transactions that flow to these illegal operators. With the offshore Internet operators cursed with a folding hand, regulation of Internet gambling will return to state control, thus preserving the sovereign right each state has as the principal arbiter of gambling legislation and policy.

In the grand scheme of Internet gambling, there will inevitably be a few rogue gambling operators that may temporarily survive or even adapt, but this is part of reality in its simplest form. However, it is only a matter of time before the law lays an iron hand on cavalier operators who choose circumvention over compliance. In the wise words of Merle Haggard, “a gambler loses much more than he wins.” So, too, will these offshore Internet gambling “Pirates of the Caribbean.”

290. Id.
291. Haggard, supra note 1.
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