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Risky Business: London's Listed Gambling Firms and their American Gamble

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Abstract

This paper charts the evolution of online gambling in the US before and after the Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006 which effectively prohibited online gambling in the US. The paper stresses the importance of regulation in the US and elsewhere in explaining the key developments in this industry. From the beginnings of online gambling the hostile approach of the US Department of Justice meant that the large US casinos did not enter this market leading to its domination by secretive offshore firms, some of whom went on to join the London Stock Exchange. Whilst this gave these firms credibility, their new status would eventually be their Achilles heel, as the responsibilities of being listed on a stock exchange meant they had to comply with the UIGEA. However, in spite of the UIGEA many American citizens continued to gamble online with the demand being met by other offshore firms who had remained privately owned. It is thus clear that prohibition does not work, meaning that the US needs to develop a regulatory regime which offers protection to its citizens who choose to gamble online.

Keywords: E-Commerce, online gambling, gambling laws, ethics

Introduction

From the opening of the first online casino in 1994 online gambling would grow to an industry which generated revenues of \$13 Billion in 2005 with 50% accounted for by the United States.¹ However, the US Department of Justice (US DOJ) believed online gambling was a breach of the Wire Act of 1961, which prohibited interstate sports betting via the telephone, a position which meant that US firms did not enter this market enabling offshore start-ups to become dominant.²

Online gambling was thus described by Eadington³ as an “invisible industry” dominated by secretive firms based in tax havens which either offered licenses or simply turned a blind eye. However, the industry gradually became more visible from 2001 as a number of these firms controversially began to float on the London Stock Exchange (LSE).⁴ In contrast to the US the UK has a liberal approach to online gambling, having long since accepted online betting from its territory and in 2007 was the first major economy to license broader online gambling operations.

From 2001 to 2006 14 online gambling firms which served the US market floated on the LSE with the largest being PartyGaming in 2005, which achieved a valuation of nearly £5 Billion, giving it a larger market value than British Airways.⁵ These flotations enabled the owners to sell stakes in the companies and gave credibility to the firms and the whole industry.

However, many commentators believed that, in view of the US position, these flotations should not have been allowed and that never had the famous description by Keynes of the Stock Market as a casino seemed more apt⁶. In response to their critics, the gambling firms and their advisers argued that their activities were legal, and that in any event they were subject to the law of their licensing authority, not the law of the US.

Prominent US politicians, angered by the rise of online gambling, had made a number of attempts from 1997 to introduce new legislation to that would end online gambling in the US. These attempts focused on updating the Wire Act or on prohibiting payments to online gambling firms. As these legislative attempts faltered the US DOJ applied pressure to organisations which serviced the gambling industry – credit card issuers for payments and media firms for advertising – but the gambling firms simply found alternative methods.

The inability to act against online gambling led many in the industry to believe they were untouchable but in the summer of 2006 the US authorities moved to assert their authority by arresting the executives of two LSE listed firms whilst in transit in American airports. This arrest was to highlight the fact that the listed status of the gambling firms – their

¹ PartyGaming, Annual Report 2005 available online at http://www.partygaming.com/images/docs/annual_report_complete.pdf.

² M. Charles, ‘Viewpoints, What Should the Owner of a Land-Based Casino Do About Internet Gambling?’, *Gaming Law Review*, 6, 1, 2002, pp.5-8.

³ W.R. Eadington, ‘The Future of Online Gambling in the United States and Elsewhere’, *Journal of Public Policy and Marketing*, 23, 2, 2004, pp. 214-219.

⁴ J. Kelly, M. Tew and L. Dubin, ‘The Global E-Gaming Industry: Why London, Why Now?’ *Gaming Law Review*, 9, 6, 2005, pp. 572-578.

⁵ D. Laffey, ‘The Ultimate Bluff: A Case Study of PartyGaming.com’, *The Journal of Information Technology*, 22, 4, 2007, forthcoming.

⁶ J.M. Keynes, *The general theory of employment, interest and money*, 1936, MacMillan, London, 1936.

claim to respectability – could also be their Achilles heel, with their share prices falling sharply before being suspended, a suspension which for one of the firms (BetOnSports) would become permanent.

In September 2006 the industry was to be dealt a crushing blow, with the passing of the Unlawful Internet Gambling Enforcement Act (UIGEA), prohibiting payments to gambling websites. Once this legislation had been passed the listed firms could no longer hide behind arguments concerning legal uncertainties, as this Act sent out a clear message that the US Congress saw online gambling as illegal. Continuation of service to US customers was not compatible with membership of the LSE and accordingly the LSE listed firms announced they were terminating service and the loss of a huge slice of their revenues. The reaction of the markets was savage with large falls in share prices, PartyGaming for example losing 58% of its value in a day, and some firms closing down. However, this was not the end of online gambling in the US. The UIGEA had allowed “carve-outs” or exemptions from the legislation for US operators who offered online gambling including lotteries and horseracing.⁷ In addition to this many privately owned offshore operators continued to target the US market, and whilst these firms faced a more difficult environment they found ways to work around the legislation.

This paper charts the evolution of online gambling in the US. The first section covers the essential background to the development of gambling in the US and its regulation. The second section then analyses the emergence of online gambling in the US and the principles which emerged from online gambling cases dealt with in US courts. The third section looks at the firms in this industry which listed on the LSE and how they managed to grow the industry in the face of advertising and media restrictions. The fourth section analyses the attempts to legislate against online gambling, which eventually succeeded with the UIGEA, examining the “carve-outs” for certain types of domestically provided gambling. Finally, the sixth section looks at the likelihood of the US introducing its own system of online gambling regulation before the paper concludes.

Gambling

Gambling involves players attempting to gain from the outcome of an unknown event. A distinction can be made in gambling between games of chance with random outcomes, such as slot machines and lotteries, and games which can involve some degree of skill, such as the card game poker and betting on sports or other events.

The business of gambling involves an operator who provides gambling products and an environment in which these activities can take place. In recent years the term “gaming” has become the preferred description of those in the industry in an attempt to describe the entertainment aspect of the activity and no doubt to escape its unsavoury associations. This paper, however, follows Wilson⁸ and keeps with the traditional term of gambling, as it is believed that this better captures the risk element and the potential for social harm.

Gambling Regulation

⁷ D.O. Stewart, ‘An analysis of Internet Gambling and its Policy Implications’, 2006, available online at http://www.americangaming.org/assets/files/studies/wpaper_internet_0531.pdf.

⁸ M. Wilson, ‘Chips, bits, and the law: an economic geography of Internet gambling’, *Environment and Planning*, 35, 7, 2003, pp. 1245–1260.

The social harm caused by gambling and its appeal to criminal organisations have led to it being illegal or tightly regulated in most countries. The decision to permit or liberalise gambling activity has often been simply an admission that gambling cannot be stopped, and that it is better to make legislative limitations upon gambling's excesses, rather than leaving it in the hands of illegal operators. This approach has the added benefit of allowing governments to capture the economic benefits and tax revenues flowing from gambling.

The United States sets gambling legislation mostly at the state level. Kearney explains how gambling in the United States was transformed from an industry with limited availability in the 1970s to one [in 2005] "that is extremely commonplace".⁹ Outside of Nevada, which legalised gambling in 1931, provision was highly restricted with no other states permitting casinos and lotteries illegal in all American states. Indeed, the casinos of Nevada were seen as something which should be closed down rather than allowed to expand.¹⁰ But despite this, during the 1960s liberalisation of gambling laws did begin, with the introduction of a lottery in New Hampshire. This was only followed by one other state (New York) in the 1960s, but in the 1970s twelve further states launched their own lotteries. A hugely significant change also occurred when Nevada introduced the Corporate Gaming Act in 1969 which allowed listed companies to operate casinos.¹¹ This enabled the entry of established brands from the hotel industry and which made gambling more acceptable.¹² Authorised casinos then appeared in other states and the 1970s and 1980s saw the emergence of Native American Casinos, whereby casinos which operated on a tax free basis were permitted on reservations. Other forms of liberalisation also occurred with, for example, the growth of slot machines in bars and racetrack casinos (known as racinos). A key point here, made by many writers, is that once gambling starts to be liberalised a "domino effect" ensues as neighbouring jurisdictions face the option of their citizens gambling in a nearby state with the associated social problems, but without any economic benefits and tax revenues.¹³ This domino effect meant that by 1999 all states except Utah and Hawaii permitted some types of gambling,¹⁴ which had enabled gambling revenues (after pay outs) to grow nearly three fold in real terms from 1982 to 1997.¹⁵ Consequently, many state governments have become heavily dependent on gambling revenues,¹⁶ leading to questions of their objectivity when considering issues of gambling regulation.

⁹ M.S. Kearney, 'The Economic Winners and Losers of Legalized Gambling', *National Tax Journal*, 58, 2005, pp. 281-302.

¹⁰ W.R. Eadington, The economics of casino gambling, *The Journal of Economic Perspectives*, 13, 3, 1999, pp. 173-192

¹¹ T. Magder 'Gambling, the WTO, and Public Morals: A Short Review of Antigua versus the United States', *Television and New Media*, 7, 1, 2006, pp. 52-67.

¹² Eadington, *op. cit.*

¹³ D. Paton, D. Siegel and L. Vaughan Williams 'A Policy Response to the E-Commerce Revolution: The Case of Betting Taxation in the UK', *The Economic Journal*, 112, 480, 2002, pp. 296-314.

¹⁴ National Gambling Impact Study Commission Report, 1999, Washington, D. C, available online at <http://govinfo.library.unt.edu/ngisc/>.

¹⁵ Eadington, *op. cit.*

¹⁶ American Gaming Association, The Tax Man Cometh, April 15, 2003, available online at http://www.americangaming.org/Press6p_eds/op_eds_detail.cfv?id=34.

Online gambling

The first online casinos emerged in the mid 1990s. McMillan links the emergence of online gambling to earlier ICT based developments in the industry such as telephone betting and the computerisation of lotteries.¹⁷ She notes how online gambling, through the Internet or digital TV (which can now be expanded to include mobile phones) enables gambling to take place 24/7 on a global basis.

Given the generally hostile approach of the US authorities gambling websites targeting the US market based themselves offshore, mainly in Caribbean islands such as Antigua and Costa Rica, which as well as offering a benign operating environment are also tax havens. A statement made to the House of Representatives in 1998¹⁸ stated that Antigua had first issued gambling licenses in 1996 and by 1998 had registered 31 gambling operations whilst Peterson notes that Costa Rica allowed operators to base themselves on its territory even though it had laws which prohibited gambling! Costa Rican gambling firms were thus unlicensed and its environment was described by The Washington Times “as anything goes”.¹⁹ In such an environment it was little surprise that the founders of two major operations were revealed to have had criminal records, being involved with bank fraud and organised crime.²⁰ This highlighted a further concern of authorities in the US and elsewhere; the favoured locations for gambling were centres for money laundering. In 2000 the UK Treasury warned UK financial institutions that there were “serious risks associated with involvement in transactions linked to the off-shore gaming industry”.²¹

In such an unregulated environment online gambling took time to grow. Many potential users felt uneasy about giving their personal details and financial information to offshore websites, and had good reasons, as some operators had acquired reputations for fixing the outcomes of games and/or refusing to make payouts.²² However, as the online population grew and the firms gained brand awareness online gambling revenues soared, reaching \$13 Billion by 2005 with 50% of revenues originating from the US.

The US legal situation

Online gambling represents a clear threat to national regulation as it crosses national borders²³. The US DOJ argued that the Wire Act of 1961, which prohibited sports

¹⁷ J. McMillan, ‘Online Gambling: Challenges to National Sovereignty and Regulation’, *Prometheus*, 18, 4, 2000, pp. 391-401.

¹⁸ K V. Di. Gregory, Statement of Kevin V. DI Gregory, to the U.S. House of Representatives concerning gambling on the Internet, June 24, 1998, available online at <http://www.cybercrime.gov/kvd0698.htm>.

¹⁹ R.A. Peterson, ‘Internet Gaming in Costa Rica’, *Gaming Law Review*, 5, 2, 1999, pp. 89-100

²⁰ A. Cabot, ‘Internet Gambling: The Relationship between Legality and Integrity’, *Gaming Law Review*, 2, 3, 1998, pp. 231-234.

²¹ UK Treasury, JMLSG Money Laundering Guidance Notes for the Financial Sector. Equivalence Status of Other Countries, November, 2000, available online at http://www.hm-treasury.gov.uk/newsroom_and_speeches/press/2000/press__131_00guid.cfm

²² S. Watson, P. Jr. Liddell, R.S. Moore and W.D. Jr. Eshee, ‘The Legalization of Internet Gambling: A Consumer Protection Perspective’, *Journal of Public Policy and Marketing*, 23, 2, 2004, pp. 209-213.

²³ McMillan, *op. cit*

betting between states or internationally using a wire communication facility, made all forms of online gambling illegal.²⁴ The view of the US DOJ was that gambling took place *both* in the jurisdiction of the website and the user, meaning that it fell within the jurisdiction of the Wire Act.

Strong opposition to online gambling also existed in the US on religious and ethical grounds with prominent Republican politicians such as Jon Kyl, Bob Goodlatte and John Leach campaigning against it. The arguments against the industry can be summarised as follows:

Addiction: The National Council on Problem Gambling reported that 8% of their calls in 2006 concerned online gambling, which is greater than the 5% online share of the total American gambling market. Online gambling can also be done from the privacy of one's home thus enabling addiction to be concealed.

Moreover, research has shown that people those under 25 years of age are at higher risk of developing gambling addictions in general and this group has been identified as being at high risk of developing addictions online.

Under-age gambling: The lowest minimum age for entry to a casino in the United States is 16 in Maine with some others allowing entry at 18. However, most states have the higher minimum age of 21 (partly due to the availability of alcohol in these venues) which conflicts with the over 18 policy adopted by most websites. In addition to this the practical enforcement of age limits on websites, with users remote from the operator, presents further difficulties.

Fairness: Concerns have been raised about gamblers being cheated by unscrupulous operators. This led to the emergence of auditing services for online casinos, such as iTech Labs and standards bodies who aim to ensure fairness such as GamCare in the UK and the Interactive Gaming Council which offers more global coverage.

Association with criminal activity: It has been alleged that criminals can use online gambling operations to launder money, an assertion which corresponds with the concentration of gambling websites in known centres for such activity. These charges, in the post 9/11 environment, have expanded to cover the funding of terrorism. There is a counter argument to this, namely that monies are sent electronically and can thus be monitored more easily than in land based casinos.

Cases involving online gambling in the US

Online betting

In 1997 the US DOJ raided the US offices of a Grenada based gambling website. Following this, in 1998 the DOJ launched its first prosecutions against the owners and managers of gambling websites.²⁵ Jay Cohen, a co-founder and President of World

²⁴ J.G. Malcolm, Statement of John G. Malcolm, Deputy Assistant Attorney General, US DOJ, Before the Subcommittee on Crime, Terrorism, and Homeland Security Committee on the Judiciary United States House of Representatives, April 29, 2003, available online at <http://www.cybercrime.gov/Malcolmtestimony42903.htm>.

²⁵ M. Brunker, 'First Web bettors prosecuted', ZDNet, March 5, 1998, available online at http://news.zdnet.com/2100-9595_22-508027.html.

Sports Exchange, one of the people indicted, voluntarily returned to the United States, believing he could “beat the charges”.²⁶

World Sports Exchange (WSE) had been set up in 1996 by Cohen, a US financial trader, and others and was licensed in Antigua. They had taken legal advice which led them to believe that if their operations and assets were offshore they were not breaking US law. WSE allowed gambling through its website and telephone operators, and had promoted its operation in the US by means of advertisements in the media.²⁷

In the ensuing court case, *United States v. Cohen*, Cohen argued WSE’s activities were legal, stating that the Wire Act could not be applied to the Internet and that WSE was subject to Antiguan law. However, these arguments failed to persuade the jury and Cohen was found guilty of contravening the Wire Act, spending two years in jail. The verdict might have come as a shock to Cohen, but was not a great surprise to commentators as WSE allowed sports betting over the telephone which was breach of the Wire Act, irrespective of any questions about gambling in the Internet age. However the Judge in this case did look at the issues arising from online betting, stating that there was no difference between the telephone and Internet in the context of the Wire Act and that gambling took place in the jurisdiction of the gambler. Under this interpretation the Wire Act clearly applied to sports betting over the Internet.

A key practical point to note here is that WSE continued to operate throughout this period and are still in business nearly a decade after the charges were made, emphasising the limits in controlling a privately held offshore firm. It seems, therefore, that Cohen’s chief mistake was not to have set up WSE, but in his decision to return to the US.

Casino gambling

The WSE case did not examine the legal status of casino-style games such as slot machines, roulette and poker. There were other court judgements which offered differing interpretations. In the 1999 case, *People v. World Interactive Gaming Corp.*, the New York Supreme Court stated that online casino gaming was a breach of the Wire Act and as in *United States v. Cohen*, held that gambling took place in the jurisdiction of the gambler.²⁸ In contrast to this in 2001 in *Thompson v. MasterCard International Inc.* Judge Stanwood Duval of the US District Court for the Eastern District of Louisiana stated “at this point in time, Internet casino gambling is not a violation of federal law”.²⁹ Naturally, offshore casinos pointed to the *Thompson v. MasterCard International Inc. Case* to justify their activities and it was regularly cited in their company documents.

The market and its firms

²⁶ K.B. Kramer, ‘The Jay Cohen Affair: Lessons in the Legality of Internet Betting’, *Gaming Law Review*, 5, 6, 2001, 551-553.

²⁷ Electronic Commerce and Law Report, *United States v. Jay Cohen*, 2001, available online at <http://pub.bna.com/eclr/001574.htm>.

²⁸ Supreme Court, New York County, *People v. World Interactive Gaming Corp.*, 1999, available at <http://www.oag.state.ny.us/internet/litigation/wigc.pdf>.

²⁹ United States Court Of Appeals, 2001, available online at caselaw.lp.findlaw.com/data2/circs/5th/0130389p.pdf.

In spite of the legal uncertainty the numbers of gambling firms targeting the US grew in the 1990s. The US National Gambling Impact Study Commission's report³⁰ included two forecasts on the growth of online gambling, both of which estimated that revenues had doubled between 1997 and 1998, with estimates of \$651 and \$919.1 million respectively for 1998. These were very much estimates and could not be relied upon as the firms in the industry were under no obligation to divulge data on their business. Gambling firms became adept at avoiding US attempts to restrict their activities, particularly in the areas of payment and advertising. From 2003 the US DOJ pressurised credit card issuers into refusing to allow gambling payments.³¹ Along with the problem of disputed payments this led Citibank and American Express to withdraw services for gambling. To overcome these problems e-wallets would become the major method of transferring funds in online gambling. Funds were transferred to e-wallets from credit cards or bank accounts and these wallets could then be used to transfer and withdraw from gambling accounts. The e-wallet thus took on the risk function and offered a low cost alternative to credit card transfers, creating value for all parties in online gambling. Two e-wallet firms dependent on gambling, Neteller and Fireone shown in Table 1 below, listed on the LSE.

In the advertising sphere the DOJ wrote to media firms urging them not to accept adverts from gambling firms. Whilst this led to the search engines Yahoo and Google and the broadcaster Infinity declining to take gambling adverts there were problems of enforcement with other media firms not complying. The gambling firms, cleverly (or deviously, depending on one's interpretation), developed so-called educational websites which offered play gambling where no real money was used, but crucially evaded the advertising restrictions enabling their brand names to be promoted.

The London Casino?

From 2001 when the LSE admitted its first online gambling firm, SportingBet, more information became available on this industry as listed firms are obliged to report key data on their business. As its name suggests, SportingBet's main line of business was betting on sports events which it accepted through the telephone and its website. Accepting telephone bets was a blatant breach of the Wire Act and, if one took the *Cohen* case as authority, Internet betting would also be in breach of the Act. The prospectus for SportingBet made clear these inherent risks of its business, stating:

*"It is likely that certain of the group's activities may constitute a violation of certain US federal statutes, including the federal wire act and the laws of certain individual states. The penalties for violations of these statutes include the possibility of significant fines and imprisonment of relevant individuals"*³²

After SportingBet joined the LSE another 8 online gambling firms which served US markets and 5 specialist support firms, which facilitated such activities, also floated as

³⁰ National Gambling Impact Study Commission Report, *op. cit.*

³¹ Watson *et al.*, *op. cit.*

³² N. Pratley, Prospectus warned of risky bet, The Guardian, September 8, 2006, available online at <http://business.guardian.co.uk/viewpoint/story/0,,1867576,00.html>.

shown in Table 1. For most of these organisations the US accounted for the majority of their 2006 revenues, BetOnSports, for example having 95% of its revenue from the US, PartyGaming 71%, Neteller 85%, SportingBet 57%, with the lowest stated figure being 38% from PlayTech. Three of the firms in Table 1 offered sports betting meaning that in effect their business was based upon the inability of the US to take action against them, whilst the others were either focused on casino games or offered support services. The total value of these firms on June 30 2006 (before the UIGEA) was £9.5 Billion which gives some indication of the sheer size of the market. The total value one year later, after the UIGEA and the delisting of many firms, at about £3 Billion further illustrates the dependency of these firms on the US and the manner in which the legislation had impacted upon them.

Table 1: Firms on the LSE which targeted the US online gambling market

Company	Year listed	Sub-Sector	Licensing Authority	Value £ millions June 30 2006	Value £ millions June 30 2007
PartyGaming	2005	Gambling	Gibraltar	4620	1265
SportingBet	2001	Gambling	Alderney	1646	247
Playtech	2006	Gambling	Alderney	730	836
888 Hldgs	2005	Gambling	Gibraltar	721	389
Neteller	2004	Speciality Finance	N/A	710	Suspended
Empire Online*	2005	Media Agencies	N/A	261	122
Cryptologic	2003	Internet	Alderney & Curacao	162	153
Excapsa	2006	Gambling	Kahnawake	138	Delisted
Fireone	2005	Financial Admin.	N/A	134	Delisted ^a
Betonsports	2004	Gambling	Antigua	133	Delisted ^b
World Gaming	2005	Software	Antigua	127	Delisted ^b
Leisure & Gaming	2005	Gambling	Curacao	80	12
Fairground	2006	Gambling	Kahnawake	33	Delisted ^b
Betcorp	2006	Gambling	Antigua	21	Delisted ^b

a Acquired

b No longer operating

*Renamed and exited gambling activities

Source: Developed using data from the London Stock Exchange

Becoming listed on the LSE enabled gambling firms to raise capital and also gave them credibility with business partners and customers. It can further be argued that this process increased the protection to gamblers as these companies were now far more transparent and had to have in place far clearer operating procedures.

It also offered the founders of these firms an opportunity to profit from their stakes by creating a liquid market for shares. Some saw this process as a re-run of the dot com boom and bust and were suspicious that the owners of the firms were seeking to make large profits before the market turned down or there was decisive action from the US.

One year after the float of PartyGaming in June 2005 the owners had received nearly £1.2 Billion through the sale of their shares.³³ Whether this was coincidence or not, one year after the final shares were sold the company's share price had fallen by 73%. The flotations of these firms also generated lucrative fees for the high profile investment banks which acted as underwriters (for example Dresdner Kleinwort acted for PartyGaming, and HSBC for 888), and the law firms which acted as advisers (Freshfields acted for 888 and PartyGaming, whilst Linklaters advised Dresdner Kleinwort and HSBC on both of these flotations).³⁴ It should be noted that no US banks were involved with the gambling flotations, wisely being fearful of the consequences.

The road to prohibition

There had been a number of attempts to prohibit online gambling from 1997 before the successful passing of the UIGEA in 2006. Before analysing these attempts it is important to note that certain forms of online gambling are permitted in the US as outlined by Stewart.³⁵

Wagering – The Interstate Horseracing Act allows online wagering (betting) on horse and dog racing for US citizens over 21 with exemptions for those from certain states. See www.youbet.com for an example.

Fantasy Sports – People can participate in simulated online sports events for which the winners receive prizes. See <http://sports.espn.go.com/fantasy> for an example.

Nevada – Wireless gambling was authorised in 2005 providing gamblers were on licensed premises. Station Casinos also allow account holders residents based in Las Vegas to place sports bets via a virtual private network.

Lotteries – Tickets can be bought in store and checked online in some states, and a second chance option is provided by some whereby a ticket's number is entered online to see if it is successful.

Finally, **share trading** is not included in any restrictions of online gambling, which with the growth of day trading and the associated risks for individuals, seems particularly ironic.

The first attempt to ban online gambling was The Internet Gambling Prohibition Act (1997) which looked to broaden the scope of the Wire Act “to all forms of Internet

³³ Forbes, Faces In The News, Forbes, June 6, 2006, available online at http://www.forbes.com/facesinthenews/2006/06/09/vodafone-carpone-baa-cx_cn_0610ukfaceweek.html; R. Peston, City comment: PartyGaming is far too good to be floated, The Daily Telegraph, 2005, available online at <http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2005/06/19/ccom19.xml&menuId=242&sSheet=/money/2005/06/19/ixfrontcity.html>.

³⁴ J. Baxter, High stakes - Internet Poker: Bubble or Bust, 2006, available online at http://www.mishcon.com/downloads/53/LB160_p50-54_OnlineGaming.pdf.

³⁵ Stewart, *op. cit.*

gambling”³⁶ and made it criminal to place and take bets online. This was passed by the Senate but failed in the House of Representatives following concerns about the criminalisation of US citizens, but also as a result of pressure from US operators who offered regulated forms of online gambling. An amended form of this Bill later failed to pass both Houses

A different focus was used in 2001 with the Unlawful Internet Gambling Funding Prohibition Act which aimed to make the transfer of funds for the purposes of online gambling illegal. This Act passed through the House of Representatives but failed in the Senate.

Further attempts were then made to prohibit online gambling but none were successful until 2006. This was in no small part due to lobbyists employed by online gambling groups, with the most well known being Jack Abramoff, who was eventually jailed for fraud in 2005.³⁷

In 2006 it seemed as though the latest attempt at legislation, the UIGEA, would fail. The UIGEA made it illegal to transmit funds to “unlawful Internet gambling” operations, whilst allowing exemptions for certain forms of domestic gambling. In March 2006 the Act passed through the House of Representatives but it was thought there would not be enough time for it to be passed by the Senate.

Indeed, the online gambling industry felt that legislative action would just remain a potential threat, which for regulatory reasons they had to warn shareholders about. Statements made in public announcements at the time make this clear. The CEO of Empire Online, for example, commented in April 2006 “I am used to US regulatory threats as an ever present ‘soundtrack’ to the industry”,³⁸ whilst the (soon to be jailed) CEO of BetOnSports stated in July 2006 that the chances of successful legislation in this area were “remote”.³⁹

However, the jailing and exposure of Abramoff had strengthened the position of the supporters of the UIGEA and in September 2006 the Act was attached to an unrelated piece of legislation, the Safe Port Act, a piece of legislation seen as essential to US security, which had strong support from both parties in the Senate. This subterfuge meant that the UIGEA was not even debated in the Senate before it was passed as part of the Safe Port Act.

The passing of the UIGEA represented a seismic shift for the LSE listed firms. In the same way that regulation had prevented US firms from entering this market and enabled these firms to emerge, their status and responsibilities as LSE companies forced them to exit this market. The UIGEA and its aftermath also guaranteed an end to the flotations of gambling firms which served the US market, meaning that this phenomenon would only restart if the US introduced its own regulatory regime.

In contrast, many privately owned firms, free from the regulatory constraints of the stock market, stated they would continue to serve the US market. In the first month after the UIGEA ComScore, the Web monitoring firm, reported that US traffic to gambling

³⁶ Watson *et al.*, *op. cit.*

³⁷ S. Kirchgassner, Gaming websites tied to Abramoff, *The Financial Times*, October 5, 2006, available online at <http://www.ft.com/cms/s/0/b89d2e4e-54a6-11db-901f-0000779e2340.html>.

³⁸ Empire Online Annual Report, 2005, available at <http://www.ep.com/documents/EOL%20FINAL%202005.pdf>.

³⁹ BetOnSports AGM Statement, 14 July, 2006, available at http://www.advfn.com/news_AGM - Statement_16130650.html.

websites fell by 27%. However, many customers soon switched to the private operators with large increases in US traffic in June 2007 to the private firms PokerStars, UltimateBet and Full Tilt Poker.⁴⁰

The UIGEA made it more difficult for these firms to serve US markets as many payment providers complied with the legislation, but there were ways around the ban. Firstly, monitoring payments to online gambling websites was not a straightforward matter and managing compliance presented major problems. Evidence of this is the advice on the UltimateBet website in October 2007 which recommends Visa and Mastercard as payment methods for US customers. Secondly, as payment firms withdrew service, new ones simply emerged. Finally, the Act also does not cover checks, 40 billion of which are written in the United States every year.⁴¹

The uncertain future?

Some saw the UIGEA as hypocritical with its carve-outs. They also believed that it was a regressive step, given that offshore gambling would continue but through well less known, and arguably less reputable, sites. Furthermore, it was argued the US was following a protectionist policy, and was therefore in breach of its WTO obligations. In 2004 Antigua brought a case against the United States, in 2005 winning a ruling that the Wire Act and various state laws were against international trade laws. The US was given until April 2006 to comply with the ruling but did not do so. After the September 2006 legislation there was speculation that a further case could be brought to the WTO, although many saw this as the online gambling firms clutching at straws.

There were legislative efforts at reform. In 2007 the Democratic Senator Barney Frank introduced the Internet Gambling Regulation and Enforcement Act (IGREA) 2007 which “which would license, legalize, and regulate Internet gambling”. This would be done in a manner which complied with existing gambling regulations in the US and also build in protections against addiction and under age gambling.⁴² Frank argued regulation was logical as most US states allowed some form of gambling anyway and the lack of regulation resulted in US citizens who chose to gamble online having no protection under US law. Bringing gambling websites onshore would also allow tax revenues to be generated. Watson et al argue for legalisation through US casinos and lay out key principles which would protect users, stating that, if online gambling was legalised, the US Casinos would soon become dominant through their brands, which would bring many US gamblers into a more responsible gambling environment.⁴³

Some in the gambling industry also felt that regulation would come, and pointed to the UK’s move, as the first major state, to license casino style gambling in 2007. It should be noted, however, that the UK experience thus far, however, has not been successful in

⁴⁰ ComScore, Press Release - comScore Media Metrix Releases Top 50 Web Rankings for June, July 16, 2007, available online at <http://www.comscore.com/press/release.asp?press=1528>.

ComScore, Press Release - comScore Media Metrix Releases October Top 50 U.S. Web Rankings and Analysis, November 13, 2006, available at <http://www.comscore.com/press/release.asp?press=1063>.

⁴¹ I. Nelson Rose, The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed, available online at http://www.gamblingandthelaw.com/columns/2006_act.htm.

⁴² American Gaming Association, Internet Gaming, 2007, available online at http://www.americangaming.org/Industry/factsheets/issues_detail.cfv?id=17.

⁴³ Watson *et al.*, *op. cit.*

attracting offshore casino operators as such operators were unsurprisingly unwilling to increase their tax burdens. Despite this, PartyGaming, in their 2006 Annual Report, cited the view of Global Betting and Gaming Consultants⁴⁴, one of the largest gambling consultancies in the world, that the US will move to a regulated environment within five years, presumably because this timescale would allow for an end to Republican control of both houses of Congress.

Online gambling might well be come to be legally accepted in the US, but in the short term, however, the US has isolated itself in an increasingly global world. It has the largest gambling industry in the world and it is inevitable that some of its Web enabled citizens will choose to gamble online. There are many reasons to restrict and control gambling provision but prohibition does not work and will simply take offshore gambling back to the secretive era of the 1990s. The Internet genie is well and truly out of the bottle and the offshore gambling industry has proved adept at avoiding restrictions and finding new ways of working. Perhaps the key question for the future is how long it will take US legislators to become as adept at adjusting to the changing world, however they might dislike it, for the benefit and protection of their citizens?

⁴⁴ PartyGaming, Annual Report 2006 available online at http://www.partygaming.com/images/docs/2006_Annual_Report.pdf

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<http://www.kent.ac.uk/kbs/research-information/index.htm>