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Volume 22
Number 2 *Symposium: Tune in, Turn on, Cop
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Article 11

1-1-2002

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Recommended Citation

Craig Lang, *Internet Gambling: Nevada Logs In*, 22 Loy. L.A. Ent. L. Rev. 525 (2002).
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INTERNET GAMBLING: NEVADA LOGS IN

*"Gambling is inevitable."*¹

I. INTRODUCTION

More than thirty years ago, Congress created a national Commission on the Review of National Policy Toward Gambling ("Review Commission") to examine gambling activity in the United States.² Upon finding that "[g]ambling is inevitable,"³ the Review Commission further concluded that "[n]o matter what is said or done by advocates or opponents of gambling in all its various forms, it is an activity that is practiced, or tacitly endorsed, by a substantial majority of Americans."⁴

Although the American public would not realize the potential of the Internet for at least another twenty years,⁵ the Review Commission's findings could very well have applied to Internet gambling. Internet gambling generated revenues of \$1.5 billion worldwide in 2000.⁶ Regardless of whether Internet gambling remains illegal in the United States, experts estimate Internet gambling revenues to grow to approximately \$10.7 billion in 2005.⁷

In some form or another, gambling has always been legal throughout the history of the United States, but it also has generated much criticism.⁸ From the infancy of the United States, several leaders of state and federal governments have censured gambling, seeing it as a vice that corrupts an

1. COMM'N ON THE REVIEW OF NAT'L POLICY TOWARD GAMBLING, GAMBLING IN AMERICA: FINAL REPORT OF THE COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING (1976) [hereinafter GAMBLING IN AMERICA].

2. Act of Oct. 15, 1970, Pub. L. No. 91-452, §§ 804-809, 84 Stat. 938.

3. GAMBLING IN AMERICA, *supra* note 1, at 1.

4. *Id.*

5. See discussion *infra* Part II.B.

6. Angie Wagner, *Nev. Should Open Cybercasinos*, ASSOCIATED PRESS, Aug. 1, 2001, 2001 WL 25489240.

7. Kevin Ferguson, *Panel: Internet Casinos Seen as Lucrative*, LAS VEGAS SUN (Aug. 2, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/aug/02/512164853.html> [hereinafter *Internet Casinos*] (citing Sebastian Sinclair, an Internet gambling analyst for Christiansen Capital Advisors).

8. See ROGER DUNSTAN, CAL. STATE LIBRARY, GAMBLING IN CALIFORNIA I-1 (1997), available at <http://www.library.ca.gov/CRB/97/03/97003a.pdf>.

otherwise moral society or brings crime and poverty to otherwise prosperous regions.⁹ Other leaders have viewed this form of entertainment as mostly harmless, providing society a chance at fortune and cities and states an economic boon.¹⁰ In the meantime, the general population's opinion on gambling has waxed and waned throughout the history of gaming.¹¹

As a result of this persistent clash among government leaders and members of the public, gambling remains a highly scrutinized industry.¹² No other business in the United States has been regulated as closely as gambling.¹³ As the Internet remains one of the least federally regulated institutions in the United States,¹⁴ it should come as no surprise that lawmakers continually struggle with attempts to create laws that directly ban, or at least limit the use of the Internet for gambling.¹⁵

For decades, Las Vegas has been the gambling capital of the United States.¹⁶ In 2001, Nevada lawmakers voted to give the Nevada Gaming Commission ("Gaming Commission") the authority to develop rules for casino operators to launch and maintain online gaming establishments within the state.¹⁷ The Gaming Commission's challenge is to ensure that these guidelines adhere to state and federal gambling regulations.¹⁸ Both the federal government¹⁹ and the American public²⁰ have voiced their

9. *See id.*

10. *See id.* at I-1 to I-2.

11. *See id.* at I-1.

12. *See id.*

13. *Id.*

14. *See* Jay Krasovec, *Cyberspace: The Final Frontier, for Regulation?*, 31 AKRON L. REV. 101, 105-07 (1997).

15. *See* Laurence Arnold, *Push for Ban on Internet Casinos Renewed*, LAS VEGAS SUN (July 25, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/jul/25/512127743.html>. Congress has attempted at least four times to develop legislation banning Internet gambling. *See* discussion *infra* Part III.A.1. Two bills passed in the Senate in 1998 and 1999, but neither could achieve House approval. Arnold, *supra*.

16. *See* discussion *infra* Part II.A.3.

17. *See, e.g.*, Act of June 14, 2001, 2001 Nev. Stat. 593 (to be codified at NEV. REV. STAT. 463); *see also* Kevin Ferguson, *Privacy Concerns Arise in Internet Gaming Review*, LAS VEGAS SUN (Aug. 1, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/aug/01/512159112.html> [hereinafter Ferguson, *Privacy Concerns*].

18. *See* Ferguson, *Privacy Concerns, supra* note 17.

19. *Internet Gambling Bill Stalled*, LAS VEGAS SUN (Sept. 20, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/sep/20/092010213.html>. Representative Bob Goodlatte of Virginia intended to introduce a bill that would ban Internet gambling throughout the United States. *Id.* However, the terrorist attacks on the World Trade Center and Pentagon on September 11, 2001 forced Congress to place the issue on the back burner. *Id.* Goodlatte still intends to introduce the bill at a future date. *Id.*

20. Jon Ralston, *Poll Gauges Online Gaming Views*, LAS VEGAS SUN (Aug. 24, 2001), at

disapproval of the Nevada legislature's efforts to legalize online gambling. However, for those whose income depends on gambling revenue, the Internet is a way to keep casinos thriving.²¹

Nevada's online gaming regulations must be enacted swiftly, but with some prudence. If these rules are successfully implemented before a national ban on Internet gambling, Nevada will have the opportunity to demonstrate to Congress and the American public that Internet gambling can be safe and successful.

Part II of this Comment examines how the history of gambling in the United States and the development of the Internet led to Internet gambling as it exists today. Part III explains federal and state governments' attempts to define Internet gambling as an illegal activity, despite the lack of any federal law that specifically addresses it. Part III also discusses the public's efforts to circumvent existing barriers on cybercasinos. Part IV explains how Nevada's legislation provides established casinos in its state a fighting chance to participate in online gambling ventures. Part V analyzes the recently enacted Nevada statutes providing for the creation of legal online gambling websites within its own state and discusses how these regulated cybercasinos could comply with federal and other states' laws. Finally, Part VI argues that the federal government should give Nevada an opportunity to create a safe and legal environment for Americans who wish to try their luck online, proposing that the federal government should set parameters for online casinos instead of instituting an outright ban.

II. HISTORY OF GAMBLING, THE INTERNET, AND INTERNET GAMBLING

A. A Brief History of Gambling in Nevada and Throughout the United States

Gambling regulation in the United States may be separated into three distinct time periods: from the 1660s to the 1800s, from the mid-1800s to the early 1900s, and from the 1930s through the present.²² During each of

<http://www.lasvegassun.com/sunbin/stories/text/2001/aug/24/512262996.html>. National pollster Frank Luntz conducted a survey of 900 respondents across the country, reporting fifty-five percent favored a ban on Internet gambling in the United States. *Id.*

21. See Lisa Snedeker, *Las Vegas Looks to Internet Gambling*, ASSOCIATED PRESS, Sept. 26, 2001, 2001 WL 28012473. Gambling analyst Marc Falcone notes that due to the decrease in tourism following the Sept. 11, 2001 terrorist attacks, a slump in Las Vegas casino revenues should encourage the faster development of online gaming: "If people aren't going out to casinos, they can continue to play at home." *Id.*

22. Dunstan, *supra* note 8, at II-1 to II-7.

these periods America's interest in gambling peaked, followed by a responsive increase in gambling regulations.²³ At the end of the first two of these eras, gambling in the United States slowed to a crawl, but increased regulations never amounted to a nationwide ban on gambling.²⁴ The beginning of the next era would find gambling in the United States thriving once again.²⁵

1. First Era: 1600s to 1800s

Beginning in the 1600s, English colonists' attraction to recreational gambling swept through the New World despite scorn by the Puritan settlers whose religious views did not tolerate such impropriety.²⁶ In the early days of gambling in America, legal gambling most often took the form of lotteries, as each colony had at least one publicly regulated lottery system to raise revenue.²⁷ As citizens and local governments began to see the economic benefits of regulated gaming,²⁸ other forms of gambling gained popularity.²⁹ By the early 1800s, small gaming house taverns sprouted into lavish casinos.³⁰ As settlers moved west, the benefit and enjoyment of gambling operations in the new republic engaged Americans nationwide.³¹ Passengers on Riverboats along the Mississippi often found themselves immersed in games of chance,³² and settlers in the South picked up new methods of gaming inspired by the Spanish, French, and early Virginians, as New Orleans became the capital for gambling in the United States.³³ Professional gamblers began to make their way toward the West Coast by the mid-nineteenth century.³⁴

23. See *id.* at II-1 to II-10. Government response wavered between regulations on gambling to prohibition on certain forms of gambling. *Id.*

24. *Id.* at II-1 to II-7.

25. See *id.* at II-1 to II-10.

26. *Id.* at II-1 to II-2.

27. Dunstan, *supra* note 8, at II-2.

28. See Frederick W. Preston et al., *Gambling as Stigmatized Behavior: Regional Relabeling and the Law*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 186, 188 (1988). The money raised by lotteries often went towards funding prominent American universities, such as Harvard, Yale, Columbia and Dartmouth, to name a few. *Id.* Additional revenue also went towards building roads and water systems. *Id.*

29. See Dunstan, *supra* note 8, at II-3. Long Island hosted the site of the first horseracing track in 1665. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

However, in the early 1800s, opposition arose to all forms of legalized gambling as serious abuses by those regulating the lotteries in the United States became apparent.³⁵ With a platform of opposition to lotteries, Democrats swept to power in the United States in 1842.³⁶ By 1860, every state except for Delaware, Kentucky, and Missouri abolished state-sponsored lotteries.³⁷ Furthermore, other forms of gambling decreased as railroad transportation and the Civil War brought riverboat traffic to a halt.³⁸ Throughout most of the country, horseracing alone emerged from the first gambling era relatively unscathed.³⁹

2. Second Era: Mid-1800s to Early 1900s

The second era in gambling followed the Civil War, when states needed funds to finance Reconstruction projects in southern and western states.⁴⁰ The Louisiana Lottery was the most famous regulated gambling operation, founded in 1868 and run by a gambling syndicate from New York.⁴¹ While every other state had prohibited lotteries by the 1870s,⁴² those prohibitions did not stop Americans from participating in the Louisiana Lottery, as ninety-three percent of the lottery's gross revenue came from out-of-state.⁴³ Lottery operator improprieties surfaced in the 1880s, and many social activist groups pushed for Congress to stop the Louisiana Lottery.⁴⁴ Congress reacted by banning all lottery materials from the mail in 1890,⁴⁵ and soon thereafter banned the same from interstate

35. Dunstan, *supra* note 8, at II-4 to II-5. See also Ronald J. Rychlack, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 32, 35-38 (1992). The general social reform of the time, including women's rights and a ban on slavery, also led to the moral opposition of state-sponsored gambling. *Id.*

36. Rychlack, *supra* note 35, at 32.

37. *Id.* at 37-38.

38. Dunstan, *supra* note 8, at II-4.

39. *Id.* at II-5.

40. Rychlack, *supra* note 35, at 38-39.

41. *Id.* at 40-41; see also Dunstan, *supra* note 8, at II-6. The syndicate bribed the Louisiana legislature into adopting the lottery law and "establishing the syndicate as the sole lottery provider." Dunstan, *supra* note 8, at II-6.

42. Rychlack, *supra* note 35, at 40. In 1867, the state of Mississippi contracted with a lottery company to run a state-sponsored lottery. *Id.* However, two years later, the people of Mississippi ratified a new Constitution that prohibited the state authorization of lottery. *Id.* The United States Supreme Court held that this new constitution invalidated the state's previous contract. See *Stone v. Mississippi*, 101 U.S. 814 (1879).

43. Rychlack, *supra* note 35, at 42. Although the Louisiana Lottery books were kept secret, some experts estimate that the lottery made annual profits of \$13 million, paying out more than \$3 million per year. *Id.* at 40-41.

44. *Id.* at 42.

45. Act of Sept. 19, 1890, ch. 908, 26 Stat. 465 (current version at 18 U.S.C. § 1302

commerce in 1895.⁴⁶ Corrupt lotteries and fraud in the horseracing industry⁴⁷ led to the end of the second era.⁴⁸ By 1910, only three states permitted gambling: betting on horse races.⁴⁹ Even in Nevada, operating a gaming facility was a felony at the end of the second era.⁵⁰

3. Third Era: 1930s to Present

The most recent era of gambling did not begin until the 1930s, when states looked for ways to stimulate their economies during the Great Depression.⁵¹ In 1931, Massachusetts took a small step towards legalizing gambling by allowing church and charity bingo parlors to boost revenues.⁵² In that same year, Nevada, “the black sheep state,” took a much larger step by legalizing casino gambling within its state.⁵³ The rise in illegal casinos in Las Vegas⁵⁴ prompted the Nevada legislature to legalize gambling to boost tourism after completing the Boulder (now Hoover) Dam.⁵⁵ Despite the state’s efforts, gaming in Nevada did not completely boom until after World War II, when the prosperity of post-war America came to fruition.⁵⁶

While other states legalized many other forms of gambling during the beginning of this era, casino gambling did not become legal in any state other than Nevada until 1978, when New Jersey lifted its ban on casinos.⁵⁷ Nevada and New Jersey remained the only states with legalized casino gambling until 1989.⁵⁸ However, since then, at least twenty states have

(1994)).

46. Act of Mar. 2, 1895, ch. 191, 28 Stat. 963 (current version at 18 U.S.C. § 1301 (1994)).

47. Dunstan, *supra* note 8, at II-7. “The odds and payouts were often faked. . . ‘Ringers,’ horses that were fraudulent substitutes and were either much quicker or slower than the expected entry, were often raced.” *Id.*

48. *Id.*

49. *Id.* Anti-gambling sentiment in the United States was so strong that Arizona and New Mexico were forced to outlaw casinos before they could be granted statehood. *Id.*

50. See *Blackjack History and Its Origin in Casinos*, at <http://www.blackjack.co.uk/main.htm> (last visited Jan. 15, 2002).

51. Dunstan, *supra* note 8, at II-7.

52. *Id.*

53. Preston, *supra* note 28, at 188.

54. Dunstan, *supra* note 8, at II-8.

55. *Id.* The decision to legalize gambling “grew out of concerns that the flourishing *illegal* gambling was corrupting law enforcement and prohibition was unenforceable.” *Id.* (emphasis added).

56. *Id.*

57. See Preston, *supra* note 28, at 188; *Blackjack History and Its Origin in Casinos*, at <http://www.blackjack.co.uk/main.htm> (last visited Jan. 15, 2002).

58. *Blackjack History and Its Origin in Casinos*, at <http://www.blackjack.co.uk/main.htm> (last visited Jan. 15, 2002).

come to recognize legal casino gambling.⁵⁹ Despite the rise in casino gambling nationwide, Nevada still remains the gambling capital of the United States today, with state gambling taxes accounting for 35.2 percent of the state's general fund tax revenues, leading the nation in per capita gaming revenue.⁶⁰ As a result of these impressive figures, Nevada stood as the model for other states that enacted legislation enabling legalized casino gambling.⁶¹

B. A Brief History of the Internet

Although not quite as illustrious as the history of gambling in the United States, the Internet has experienced its own success since its creation.⁶² The Internet began as a small network called ARPANET⁶³ in 1969 when the United States Department of Defense connected four host computers to military and Department of Defense computer databases.⁶⁴ Although this computer network grew during the next two decades, the Department of Defense's Defense Advanced Research Projects Agency had a relatively easy time maintaining control over the system.⁶⁵

Government contractors involved in the academic community requested that universities and research organizations have access to ARPANET.⁶⁶ As a result, the National Science Foundation ("NSF") created NSFNet, which replaced ARPANET as the network backbone.⁶⁷ The NSF opened access to "the Net" to educational institutions in exchange for their research data.⁶⁸ The increase in personal and home computers during the 1980s coupled with the popularity of the Net's decentralized format resulted in a leap in the total number of Net users by 1990.⁶⁹ By the

59. *Id.*

60. *Nevada*, at <http://www.infoplease.com/ipa/A0108242.html> (last visited Mar. 3, 2002). However, Nevada only ranks tenth among U.S. states in total gaming revenue. *Id.*

61. Preston, *supra* note 28, at 188.

62. See Marcus Maher, *An Analysis of Internet Standardization*, 3 VA. J.L. & TECH. 5, ¶¶ 4-11 (1998), at http://vjolt.student.virginia.edu/graphics/vol3/vol3_art5.html.

63. The name "ARPANET" derives from the Advanced Research Projects Agency ("ARPA") that created and monitored the network ("NET") system. See *id.* ¶ 4.

64. *Id.*

65. *Id.*

66. *Id.* ¶ 8.

67. *Id.*

68. Mark A. Kassel & Joanne Keane Kassel, *Don't Get Caught in the Net: An Intellectual Property Practitioner's Guide to Using the Internet*, 13 J. MARSHALL J. COMPUTER & INFO. L. 373, 375 (1995).

69. *Id.* at 375-76. The Internet consisted of about 100 networks in 1985, 500 in 1989, and 2,000 in January of 1990. *Id.* at 376.

1990s, the Internet had arrived.⁷⁰

While the transmission between Net users was previously restricted to text, the Mosaic web browser,⁷¹ developed at the University of Illinois, brought users the capacity to share, display, and view images.⁷² The subsequent introduction of commercial Web browsers, such as Netscape, created an entirely new way of doing business: e-commerce.⁷³

With the ability to turn small-time operations into nationwide businesses overnight,⁷⁴ the amount of business conducted over the Internet exploded in the 1990s.⁷⁵ However, because this technological explosion became larger than most e-business operators expected,⁷⁶ as many as fifty-five percent of all online businesses have failed since the inception of e-commerce, largely because they were unable to fill the vast amount of orders they received over the Internet.⁷⁷ Nevertheless, two Internet markets have survived the e-commerce boom and bust virtually unaffected and continue to thrive as they always have: Internet pornography⁷⁸ and Internet

70. See David Mayr, *History of the Internet and the WWW*, at <http://www.members.magnet.at/dmayr/history.htm> (last visited Jan. 15, 2002). The Internet hosted one million computers by 1992. *Id.* In 1993, the growth rate of the Internet was 341%. *Id.*

71. This software allowed users to view pictures and hear sounds on what used to be only a "text-based environment." *History & Overview—Java: One Year Out*, at <http://www.webreference.com/content/java/history.html> (last visited November 13, 2001). "The impact of seeing the Louvre and hearing Martin Luther King's 'I Have a Dream' speech, . . . rather than reading about them, was a strong one." *Id.*

72. Maher, *supra* note 62, ¶ 11.

73. See Symposium, *The Taxation of E-Commerce*, 61 MONT. L. REV. 1, 5–6 (2000) [hereinafter *The Taxation of E-Commerce*] (statement by Orson Swindle, an employee of the Federal Trade Commission). "E-commerce" is defined as "[t]he practice of buying and selling goods and service through online consumer services on the Internet." BLACK'S LAW DICTIONARY 530 (7th ed. 1999).

74. See, e.g., William T. Lasley, *E-Commerce Then and Now, Part 1: Definition and History*, at <http://artsandcrafts.about.com/library/weekly/aa041201.htm> (last visited Jan. 16, 2002) ("Frequently, the entire business plan of [Internet] companies consisted of nothing more than attempting to draw lots of users to their sites in order to attract investors when the company was put up for sale on Wall Street . . . the idea appeared to work!").

75. See *The Taxation of E-Commerce*, *supra* note 73, at 5 (A study by the University of Texas and Cisco Systems revealed that the Internet economy in 1998 generated \$301 billion and created more than 1.2 million jobs.).

76. See William T. Lasley, *E-Commerce Then and Now, Part 2: Present*, at <http://artsandcrafts.about.com/library/weekly/aa042601.htm> (last visited Jan. 31, 2002).

77. See *id.*; William T. Lasley, *E-Commerce Then and Now, Part 1: Definition and History*, at <http://artsandcrafts.about.com/library/weekly/aa041201.htm> (last visited Jan. 16, 2002).

78. See Joseph C. Rodriguez, *A Comparative Study of Internet Content Regulations in the United States and Singapore: The Invincibility of Cyberporn*, 1 ASIAN-PAC. L. & POL'Y J. 1, 7 (2000), available at <http://www.hawaii.edu/aplpj/pdfs/09-rodriguez.pdf>. Internet porn generated about \$925 million from 28,000 adult Websites in 1998. *Id.*

gambling.⁷⁹

C. When Internet Met Gambling: A Love Story in the Making

Gambling and the Internet are extremely compatible, as New York Assistant Attorney General Joel Michael Schwarz illustrated in the following comparison:

[Gamblers have] been characterized [as] opportunistic pioneers who had an adventurous spirit, high expectations of making money and who enjoyed taking risks. The Internet has likewise been characterized as a new mode of technology which provides those with an entrepreneurial spirit the opportunity to take risks in order to secure great wealth.⁸⁰

Online gambling became immediately popular early in the Internet's history, with sports enthusiasts making their bets online during the early 1990s.⁸¹ The first online casino opened in August 1995.⁸² By July 1997, the number of Internet sites that offered live wagering expanded to thirty.⁸³ Today, approximately 1,400 Websites, all based outside the United States, provide online gambling.⁸⁴

Internet gambling sites typically consist of a Web-based virtual casino that offers blackjack, roulette, slots, sports wagering, or other games of chance.⁸⁵ By using a computer, the gambler can study odds and make a bet through a phone line or other Internet connection.⁸⁶ Because this transaction takes place over the Internet, a user from anywhere in the United States can connect with the gaming facility outside of the United States through the use of interstate and international communication

79. See Wagner, *supra* note 6. Internet gambling generated an estimated \$1.5 billion in revenue in 2000. *Id.*

80. Joel Michael Schwarz, *The Internet Gambling Fallacy Craps Out*, 14 BERKELEY TECH. L.J. 1021, 1070 (1999) (footnote omitted).

81. *Internet Gambling, in THE INTERNET IN POLITICS AND SOCIETY* (Dep't of Pub. Policy Studies, Duke Univ., 1999), at <http://www-pps.aas.duke.edu/centers/dewitt/course/internetandsociety/gambling/index.html>.

82. *Id.*

83. *Internet Gambling Prohibition Act: Hearing on S. 474 Before the Subcomm. on Tech., Terrorism, and Gov't Info. of the S. Judiciary Comm.*, 105th Cong. 47 (1997) (prepared statement of Sue Schneider, Chairman, Interactive Gaming Council of the Interactive Services Association).

84. *Las Vegas Casinos Look to Internet as Future Safety Net*, LAS VEGAS SUN (Sept. 25, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/sep/25/092510998.html> [hereinafter *Safety Net*].

85. See Schwarz, *supra* note 80, at 1026–27.

86. See *id.*

facilities.⁸⁷ By the end of 1998, approximately twenty-two foreign jurisdictions provided a base for regulated and licensed Internet gambling operations.⁸⁸

III. FINDING AN OLD FOE IN A NEW PLACE: REGULATORS CONFRONT INTERNET GAMBLING

Aware of the Internet's rapid growth in the late 1990s, Congress began to acknowledge the possibility of the proliferation of "inappropriate activities such as gambling, pornography and consumer fraud" on the Internet.⁸⁹ Speaking before the Senate Judiciary Committee in 1997, Senator Bob Graham noted Americans' increased presence on the Internet, and the threat to America's youth due to the increasingly easier access to Internet gambling.⁹⁰ Furthermore, because gambling could be subject to fraud and deceptive practices,⁹¹ concerns regarding consumer protection on the Internet drove legislators to attempt to prohibit cybercasinos in the United States.⁹²

A. The Federal Government Fights Internet Gambling

1. Round One: Congress

In a speech to the United States Senate Judiciary Committee in 1997, Senator Graham described the need for federal legislation prohibiting Internet gambling:

States have historically been the primary regulator of gambling activities. However, the widespread use of the Internet and its potential to serve as a conduit of gambling activities across national and State borders, serves to undermine States' regulatory control. Our legislation is [intended] . . . to assist States' ability to enforce its own gambling laws.⁹³

87. *See id.* at 1027.

88. *See* Jose Martinez, *A Gambler in Boston Laid 45 Grand on This Weekend's Football Games*, BOSTON HERALD, Nov. 2, 1998, at 3, LEXIS, News Library, Boston Herald File.

89. 143 CONG. REC. S2560 (daily ed. Mar. 19, 1997) (statement of Sen. Jon Kyl).

90. 143 CONG. REC. S2561 (daily ed. Mar. 19, 1997).

91. *See* discussion *supra* Part II.A.

92. Internet Gambling Prohibition Act of 1997, S. 474, 105th Cong. (1997).

93. 143 CONG. REC. S2561 (daily ed. Mar. 19, 1997) (statement of Sen. Bob Graham).

Members of Congress attempted to prohibit Internet gambling outright beginning in 1995,⁹⁴ around the same time that the Internet hosted the first cybercasino.⁹⁵ As part of his 1995 Crime Prevention Act, Senator Jon Kyl introduced a provision that would make it illegal for an individual to participate in Internet gambling if gambling was illegal in that person's state.⁹⁶ That bill was killed in committee, but Senator Kyl insisted he would re-introduce the bill.⁹⁷

The Senator kept his word and in 1997, he introduced the Internet Gambling Prohibition Act,⁹⁸ which proposed to amend the Wire Act⁹⁹ by penalizing individual gamblers and providing injunctive relief that would bar the online wagering transmission from Interstate commerce.¹⁰⁰ The bill passed in the Senate by an overwhelming majority.¹⁰¹ However, because of the ongoing impeachment hearings occurring in the House of Representatives, the 1997 Internet Gambling Prohibition Act never made it to the House floor.¹⁰²

Refusing to give up, Senator Kyl introduced another bill to prohibit Internet gambling in 1999.¹⁰³ Unlike the 1997 bill, which included penalties for the individual gambler,¹⁰⁴ the newer bill focused primarily on penalizing cybercasino operators.¹⁰⁵ Furthermore, instead of amending the Wire Act, the new bill recommended the creation of an entirely new statute.¹⁰⁶ It also gave state attorneys general authority to apply for a temporary injunction or a restraining order against an Internet operation if they believed that a violation of this law either occurred or was imminent.¹⁰⁷ The Senate unanimously passed this new bill.¹⁰⁸

94. See 141 CONG. REC. S19114 (daily ed. Dec. 21, 1995) (statement of Sen. Jon Kyl).

95. See discussion *supra* Part II.C.

96. 141 CONG. REC. S19114 (daily ed. Dec. 21, 1995) (statement of Sen. Jon Kyl).

97. James Sterngold, *A One-Armed Bandit Makes a House Call: Virtual Casino Is Coming, But Regulation Is Still a Big Question*, N.Y. TIMES, Oct. 28, 1996, at D1.

98. See 143 CONG. REC. S2560 (daily ed. Mar. 19, 1997) (statement of Sen. Jon Kyl); Internet Gambling Prohibition Act of 1997, S. 474, 105th Cong. (1997).

99. 18 U.S.C. § 1084 (1994); see discussion *infra* Part III.A.2.

100. S. 474, 105th Cong. § 3 (1997).

101. See 144 CONG. REC. S8815-S8822 (daily ed. July 23, 1998).

102. Andrew Beyer, *Racing Industry Gambling on Internet Legislation*, WASH. POST, Mar. 31, 1999, at D1.

103. Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (2000).

104. See S. 474, 105th Cong. § 3 (1997).

105. See S. 692, 106th Cong. § 1085(b)(1) (2000).

106. *Id.* § 1085.

107. *Id.* § 1085(c)(2)(B).

108. See 145 CONG. REC. S14870 (daily ed. Nov. 19, 1999) (statement of presiding officer).

On July 17, 2000, the House of Representatives failed to achieve the two-thirds support needed to pass its version of the Internet Gambling Prohibition Act, thereby stopping Senator Kyl once again.¹⁰⁹ Those voting against the bill voiced concerns over the amount of regulation it would create for Internet users and the fact that the bill required online gambling establishments to follow a set of rules different from those required for offline gambling.¹¹⁰

In November of 2001, Representative Bob Goodlatte of Virginia introduced another bill that would update the Wire Act to create a bar to Internet gambling.¹¹¹ If passed, this bill would prohibit gambling operations from accepting certain types of payment, including checks, Internet money transfers, and credit cards.¹¹² Although this bill has yet to make it to the House floor, previous supporters of an Internet gambling ban have indicated that they are not certain that they will support this latest attempt to prohibit online wagering.¹¹³

2. Round Two: The Courts

While Congressional debates continue regarding the creation of a federal prohibition of Internet gambling,¹¹⁴ some legislators have pointed to existing federal law that already bans Internet gambling in states where gambling is generally illegal.¹¹⁵ Although Congress has yet to ban Internet gambling, the federal courts have used existing law to ensure that Internet gambling will not go unpunished when practiced in most states.¹¹⁶ Courts

109. See Thomas J. D'Amico & Gabriela I. Coman, *House Rejects Internet Gambling Prohibition Act*, E-COM. L. REP., Sept. 2000, WL 11 GLECOMLR 13; H.R. 3125, 106th Cong. (1999).

110. *Id.*

111. See Combating Illegal Gambling Reform and Modernization Act, H.R. 3215, 107th Cong. (2001).

112. *Id.* § 3(b)(1).

113. See *New Effort Launched to Ban Internet Gambling*, LAS VEGAS SUN (Nov. 2, 2001), at <http://www.lasvegassun.com/sunbin/stories/archives/2001/nov/02/512567891.html> (last visited Nov. 15, 2001). Nevada Congresswoman Shelly Berkley, who supported Goodlatte's 2000 bill to prohibit Internet gambling, stated her opinion about Internet gambling is "evolving" and says she is still considering whether she would support the new bill. *Id.*

114. See discussion *supra* Part III.A.1.

115. See 144 CONG. REC. S8822 (daily ed. July 23, 1998). Delaware Sen. Biden noted that betting over a telephone wire, such as those that facilitate Internet connections, constitutes illegal gambling under federal law. *Id.*

116. See, e.g., *U.S. v. Cohen*, 260 F.3d 68, 78 (2d Cir. 2001) (using the Wire Act as support for the conviction of the creator of an Antigua-based Internet gambling operation that took bets from New York citizens).

have relied on the Wire Act¹¹⁷ and the Travel Act¹¹⁸ as support for federal prosecution of Internet gambling operations that maintain some transactional contact with the United States.¹¹⁹ The Wire Act states that the federal government may fine or imprison anyone who takes a bet or makes a wager on any sporting event or contest via interstate or foreign wire communications.¹²⁰ “Wire communication” as used in this statute includes any type of communication made over cable or wire.¹²¹ The one exception to the Wire Act occurs when the transmission of a bet both begins and ends in a jurisdiction where the type of the wager being made is legal.¹²²

The Travel Act makes it illegal to use any facility in interstate commerce with the intent to promote or carry out any unlawful activity.¹²³ A violation of this Act can result in a fine or up to five years imprisonment.¹²⁴ The Travel Act explicitly states that “unlawful activities,” as it is used in the statute, includes “any business enterprise *involving gambling*” in a jurisdiction where such gambling is considered illegal.¹²⁵

One recent federal case involving Internet gambling held that the Wire Act applies to cybercasino operators who interact with gamblers from states that prohibit gambling.¹²⁶ In *U.S. v. Cohen*,¹²⁷ the Second Circuit Court of Appeals held that, although the defendant operated his Internet gambling site from Antigua where such operation was legal, he violated the Wire Act by taking bets from citizens in New York, where wagering on sporting events is illegal.¹²⁸

117. 18 U.S.C. § 1084 (1994).

118. *Id.* § 1952 (1994).

119. *People v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844, 851–52 (1999); *Cohen*, 260 F.3d at 78.

120. 18 U.S.C. § 1084(a). Section (a) of the Wire Act states:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers 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 bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

Id.

121. *Id.* § 1081.

122. *Id.* § 1084(b).

123. *Id.* § 1952(a).

124. *Id.* § 1952(a)(3)(A).

125. *Id.* § 1952(b)(i)(1) (emphasis added).

126. *See Cohen*, 260 F.3d at 74–75.

127. 260 F.3d 68 (2d Cir. 2001).

128. *Id.* New York’s Constitution states, “No . . . bookmaking, or any other kind of

In that case, the defendant, Jay Cohen, raised as a defense a statutory exception to the Wire Act that allows for the bettor to place his bet in a state where gambling is legal, so long as the bet is accepted in a jurisdiction where such betting is also “legal.”¹²⁹ Cohen argued that this exception applied to states where gambling is not considered a “crime.”¹³⁰ While New York law stated that gambling was not legal, it had not declared betting as a “crime” per se.¹³¹ The court rejected Cohen’s argument and found nothing in the language or legislative history to indicate that the exception to the Wire Act requires that gambling be deemed a “crime” when the state already declared it illegal.¹³²

Cohen also attempted to argue that the Wire Act’s requisite *mens rea* of “knowingly”¹³³ meant that he had to know that gambling in the bettor’s state was illegal.¹³⁴ The court rejected this argument as well, stating that Cohen only needed to know that the transmission itself was a “bet;” “misinterpretation of the law, like ignorance of the law, was no excuse.”¹³⁵

Despite the Second Circuit’s broad interpretation of the Wire Act’s applicability to Internet gambling operations, the United States District Court for the Eastern District of Louisiana interpreted the Act more narrowly and found that it applied only in specific circumstances of online gambling.¹³⁶ In the class action suit of *In re Mastercard International Inc.*,¹³⁷ the plaintiff gamblers sued various credit card companies for honoring debts they incurred by placing bets with their credit cards on Internet gambling Websites. Judge Duval noted that because the language of the Wire Act refers to “wagers on any sporting event or contest,”¹³⁸ the plaintiffs failed to state a cause of action, as their complaint did not allege that the debts incurred were from wagering on sporting events.¹³⁹

gambling . . . shall hereafter be authorized or allowed within this state . . .” N.Y. CONST. art. I § 9. Certain exemptions apply to lotteries and horseracing. *Id.* New York law also states, “[a]ll wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance . . . or unknown or contingent event whatever, shall be unlawful.” N.Y. GEN. OBLIG. L. § 5-401.

129. *U.S. v. Cohen*, 260 F.3d at 71, 73–74; *See also* 18 U.S.C. § 1084(b).

130. *Cohen*, 260 F.3d at 73.

131. *Id.* at 73–74; *see also* *People v. McDonald*, 165 N.Y.S. 41, 45 (N.Y. App. Div. 1917) (stating that betting, while not legal, is not a crime).

132. *Cohen*, 260 F.3d at 73–74, 74 n.3.

133. 18 U.S.C. § 1084(a).

134. *Cohen*, 260 F.3d at 75–76.

135. *Id.* at 76.

136. *See In re Mastercard Int’l Inc.*, 132 F. Supp. 2d 468, 479–81 (E.D. La. 2001).

137. 132 F. Supp. 2d 468, 473–75 (E.D. La. 2001).

138. 18 U.S.C. § 1084(a) (1994).

139. *In re Mastercard*, 132 F. Supp. 2d at 481.

Referring to the proposed Internet Gambling Prohibition Act of 1999,¹⁴⁰ Judge Duval also noted the Act's purpose is to prohibit the use of the Internet to gamble on sporting events *and* "games of chance."¹⁴¹ Understanding that Congress intended to amend the language of current U.S. statutes, Judge Duval interpreted the Wire Act in its current state to apply only to the "types of events enumerated in the statute, sporting events or contests."¹⁴²

While neither Judge Duval nor the Second Circuit applied the Travel Act¹⁴³ in their decisions, a New York trial court relied on the Travel Act in a decision regarding unlawful Internet gambling.¹⁴⁴ In *People v. World Interactive Gaming Corp.*,¹⁴⁵ the court found that using modems and telephone lines to access the Internet and exchange gambling information constituted use of "any facility in interstate or foreign commerce" with the intent to carry out "any unlawful activity."¹⁴⁶ Because the defendants in this case knowingly violated New York's anti-gambling statutes,¹⁴⁷ they therefore conducted "unlawful activity" under the Travel Act.¹⁴⁸ The defendant, a Delaware corporation that established an online gaming facility based in Antigua,¹⁴⁹ was subsequently enjoined from conducting business within the state of New York and ordered to pay fines for its violation of the Travel Act and other state and federal laws.¹⁵⁰

B. The Fight Against Internet Gambling at the State Level

Although some members of Congress believe that the problems associated with Internet gambling have become too vast to be regulated by state government,¹⁵¹ some evidence shows that states have successfully regulated Internet gambling on their own.¹⁵² States such as Louisiana,

140. S. 692, 106th Cong. (2000).

141. *In re Mastercard*, 132 F. Supp. 2d at 480 (citing S. 692, 106th Cong. (1999)).

142. *Id.* at 481.

143. 18 U.S.C. § 1952 (1994).

144. *People v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844, 852 (N.Y. Sup. Ct. 1999).

145. 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999).

146. *Id.* at 852 (citing 18 U.S.C. § 1952).

147. *Id.* at 851.

148. *See id.* at 852.

149. *Id.* at 846-47.

150. *Id.* at 846, 854.

151. *See* discussion *supra* Part III.A.1; 143 CONG. REC. S2561 (daily ed. Mar. 19, 1997) (Statement of Rep. Graham).

152. *See* NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 5-7-5-8 (1999), available at <http://www.casino-gambling-reports.com/GamblingStudy/InternetGambling/>

Illinois, and South Dakota have enacted specific statutes making the operation of an Internet gambling site illegal.¹⁵³ In 1997, the Florida Office of the Attorney General convinced Western Union to stop money-transfers to forty offshore sports books, and sent “cease and desist” letters to media outlets that advertised offshore gambling operations.¹⁵⁴

In 1997, a Minnesota appellate court held that it had personal jurisdiction over an online casino operator in Belize through the state’s long-arm statute.¹⁵⁵ In *State v. Granite Gate Resorts, Inc.*,¹⁵⁶ the court permitted the Minnesota Attorney General to proceed with a case against the online casino operator on charges of deceptive trade practices, consumer fraud, and false advertising because Granite Gate advertised in Minnesota that gambling on the Internet was lawful. The court asserted that Minnesota had jurisdiction to prosecute the defendant under its long-arm statute¹⁵⁷ because the operator of the gambling site purposely availed himself through advertisements and contact with an undercover state official who posed as “a Minnesotan interested in placing bets.”¹⁵⁸

Although some states, such as California, do not have laws specifically prohibiting Internet gambling,¹⁵⁹ private lawsuits against credit card companies have inhibited online wagering.¹⁶⁰ For example, in two cases filed in California state courts, individual bettors sued credit card companies seeking injunctions to bar the companies from collecting on debts incurred while making bets on the Internet as the bets were illegal under the Wire Act.¹⁶¹ The resulting litigation prompted some companies, such as Providian National Bank, to prohibit users from betting online with

index.htm [hereinafter FINAL REPORT]. However, the National Gambling Impact Study Commission believed the impact of state’s efforts was limited. *Id.* at 5-10.

153. 1997 La. Acts 1467; 720 ILL. COMP. STAT. ANN. 5/28-1(a)(12) (Supp. 2001); S.D. CODIFIED LAWS § 22-25A-8 (2001).

154. FINAL REPORT, *supra* note 152, at 5-8.

155. *See State v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 718-721 (Minn. Ct. App. 1997), *aff’d*, 576 N.W.2d 747 (1998).

156. 568 N.W.2d 715, 717 (Minn. Ct. App. 1997).

157. *Id.* at 718 (citing MINN. STAT. § 543.19 (1996)).

158. *Id.* at 717, 721.

159. *See Internet Gambling Ban Shelved, Questions Raised by Tribe*, LAS VEGAS SUN (Aug. 29, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/aug/29/512281646.html>. (reporting that the California Senate shelved legislation to ban online gambling until further studies could be made).

160. *See Bill Burton, Online Losers*, Dec. 13, 1999, at <http://casinogambling.about.com/library/weekly/aa121399.htm>.

161. *See id.* This is similar to the case filed against credit card companies in the District Court for the Eastern District of Louisiana. *See In re Mastercard*, 132 F. Supp. 2d at 468; *see also* discussion *supra* Part III.A.2.

their cards.¹⁶² Other companies, such as MasterCard, now require that Internet casinos keep a record of cardholders' addresses, and post on their sites that gambling online is against the law in California and other states.¹⁶³

C. Casinos and Gamblers Try to Get Around U.S. Law

Attempts to prohibit gambling on both state and federal levels have led to the creation of "safe havens"—locations outside the United States where Internet casinos base their operations.¹⁶⁴ Many of these safe havens are located in Caribbean countries, such as Antigua.¹⁶⁵ For minimal effort and a low cost, casino operators can obtain Internet gambling licenses,¹⁶⁶ and may even receive government protection from prosecution by United States authorities.¹⁶⁷ In Australia, the government has established a precise licensing scheme for hosting Internet gambling sites in the country.¹⁶⁸ However Australia's regulations are unusual in that even though Internet casinos can base their Web sites in the country, they are banned from taking bets from Australian citizens in games such as virtual slot machines and card games.¹⁶⁹

While some Internet casinos outside the United States say they do not accept bets from bettors in the states,¹⁷⁰ Americans have found many ways to get around the illegality of Internet gambling from within the United States.¹⁷¹ For example, American bettors can mask their location by dialing to an offshore Internet service provider ("ISP") before logging into a

162. Burton, *supra* note 160. Settling a case brought against it, Providian agreed to release a credit card holder from the \$115,000 gambling debt that she had incurred on her charge account. *Id.*

163. *Id.*

164. Valerie Jepson, *Trend and Development: Internet Gambling and the Canadian Conundrum*, 6 APPEAL 6, 7 (2000).

165. *Id.*

166. *Id.*

167. See Jim Barlow, *One Profit Center on Net Is Gambling*, HOUSTON CHRON., Sept. 19, 2000, at Business 1 (Antigua's attorney general, Errol Cort, said he will refuse to extradite to the United States any operator threatened to be prosecuted by American law for illegal gambling.).

168. Joseph M. Kelly, *Internet Gambling Law*, 26 WM. MITCHELL L. REV. 117, 125 (2000).

169. See Ferguson, *Privacy Concerns*, *supra* note 17. Although online bets of these types are banned, there is no prohibition on web-based race and sports book betting. *Id.*

170. See *Athletes Will Be Allowed to Bet On the Olympics*, GAMBLING MAG., at <http://www.gamblingmagazine.com/articles/48/48-470.htm> (last visited Feb. 12, 2002) (quoting Associated Press report that Australia-based Centrebet will not accept online bets from the United States).

171. See FINAL REPORT, *supra* note 152, at 5-10.

cybercasino.¹⁷² By doing this, it appears to the cybercasino operator that the gambler is accessing the Internet from a jurisdiction where Internet gambling is legal.¹⁷³ Therefore, even though federal and state laws attempt to keep Americans from gambling online,¹⁷⁴ some nevertheless find ways around the regulations.¹⁷⁵

D. Where Internet Gambling Stands Now

Because of the exception created in the Wire Act and other similar acts,¹⁷⁶ it is clear that courts cannot enforce a prohibition on Internet gambling when the bet is transmitted from one jurisdiction that recognizes legal online gambling to another that also recognizes it.¹⁷⁷ This has prompted some states where land-based gambling is legal to enact specific prohibitions on Internet gambling.¹⁷⁸ Nevertheless, legislatures in states where land-based gambling remains legal have the authority to allow online wagering within their borders.¹⁷⁹ States have the ability to establish their own rules for legalizing Internet gambling so long as the federal government continues to fall short of enacting legislation that would prohibit Internet gambling outright.¹⁸⁰ Thus, states currently have the opportunity to prove that regulation at the state level can successfully control Internet gambling and generate additional revenue.¹⁸¹

IV. NEVADA TAKES A GAMBLE: NEVADA'S INTERNET GAMBLING LEGISLATION

In 1997, Nevada became one of the first states to make Internet gambling illegal.¹⁸² Its statutes provide that the operator of an online

172. *Id.* at 5-10 to 5-11.

173. *Id.*

174. See discussion *supra* Part III.A, Part III.B.

175. See FINAL REPORT, *supra* note 152, at 5-10.

176. See 18 U.S.C. § 1084(b) (1994); see also 18 U.S.C. § 1952(b)(1) (1994). The Travel Act may only be applied when the gambling activity is a violation of the law of the state in which the act is committed. See 18 U.S.C. § 1952(b)(1).

177. See 18 U.S.C. § 1952(b)(1).

178. See, e.g., NEV. REV. STAT. ANN. 465.091-465.094 (Michie 2001).

179. See 18 U.S.C. § 1084(b).

180. See Jenna F. Karadbil, *Casinos of the Next Millennium: A Look into the Proposed Ban on Internet Gambling*, 17 ARIZ. J. INT'L & COMP. L. 413, 419 (2000). "Because the transactions take place in the state, state law may be more applicable than federal statutes." *Id.*

181. See Kevin Ferguson, *Survey of Gamblers: Online Casinos not a Threat to Resorts*, LAS VEGAS SUN (Oct. 25, 2001), at <http://www.lasvegassun.com/sunbin/stories/archives/2001/oct/25/512533550.html>.

182. See Peter Brown, *Regulation of Cybercasinos and Internet Gambling*, in 19TH

gambling site, even if the operation is licensed in another jurisdiction where Internet gambling is legal, is guilty of a misdemeanor in Nevada if the operator accepts a wager from a person within Nevada.¹⁸³ However, the statute carves out an exception to the rule in stating that the law does not apply if the bet is transmitted to a licensed person or establishment in Nevada and the wager “complies with all other applicable laws and regulations concerning wagering.”¹⁸⁴

Noticeably, the exception allows the state to establish rules that would provide for the creation of a licensing system for Internet gambling sites based in Nevada.¹⁸⁵ Accordingly, on June 14, 2001, Nevada Governor Kenny Guinn signed into law a bill that allowed the Nevada Gaming Commission to create regulations and a licensing structure for casino operators who wish to establish Internet gambling outfits based in Nevada.¹⁸⁶ The governor stated that Nevada has often been the model for gaming legislation and that this new bill would give Nevada another opportunity to “serve as a leader” in establishing Internet gambling regulations.¹⁸⁷

The 2001 addition to Nevada’s legislation permits the Gaming Commission to “adopt regulations governing the licensing and operation of interactive gaming,”¹⁸⁸ otherwise known as Internet gambling.¹⁸⁹ The statute allows the Gaming Commission to adopt rules governing Internet gambling only when it the Gaming Commission determines that:

- (A) Interactive gaming can be operated in compliance with all applicable laws;
- (B) Interactive gaming systems are secure and reliable, and provide reasonable assurance that players will be of lawful age and communicating only from jurisdictions where it is lawful to make such communications; and
- (C) Such regulations are consistent with the public policy of the

ANNUAL INSTITUTE ON COMPUTER LAW, at 9, 15 (PLI Patents, Copyrights, Trademarks, & Literary Property Course Handbook Series G0-004D, 1999).

183. NEV. REV. STAT. ANN. 465.091–465.094 (Michie 2001).

184. *See id.* at 465.094.

185. *Id.*

186. Press Release, From the Office of Governor Kenny Guinn, Guinn Signs Internet Gaming Bill (June 14, 2001), at <http://gov.state.nv.us/pr/2001/06-14GMNG.htm> [hereinafter Press Release].

187. *Id.*

188. Act of June 14, 2001, 2001 Nev. Stat. 593, § 3(1) (to be codified at NEV. REV. STAT. 463).

189. *See id.* § 2.

state to foster the stability and success of gaming.¹⁹⁰

Although the statute gives the Gaming Commission discretion to establish regulations for Internet gambling, the legislation also requires the Gaming Commission to limit Internet gambling to specific rules.¹⁹¹ For example, the Gaming Commission must create a licensing structure for operators of Internet gambling establishments, manufacturers of Internet gambling systems, and manufacturers of equipment associated with Internet gambling systems.¹⁹² The Nevada legislature also set the licensing fee for Internet gambling operations at \$500,000 for two years.¹⁹³ Additionally, the new legislation does not allow merely any individual to set up shop and take advantage of Nevada's legalized Internet gambling laws.¹⁹⁴ For instance, the statute permits only a casino or hotel licensed to host gambling at its facilities to operate an Internet gambling site.¹⁹⁵

The statute also establishes different requirements based on the population of the county in which the Internet gambling operation is based.¹⁹⁶ For example, in a county with 400,000 people or more, such as Clark County¹⁹⁷ where Las Vegas lies, the establishment must be a "resort hotel that holds a nonrestricted license to operate games and gaming devices."¹⁹⁸ For those operations based in counties where the population is between 40,000 and 400,000, such as Washoe County where Reno lies,¹⁹⁹ the establishment must have, among other requirements, a nonrestricted gaming license, at least 120 hotel or motel rooms, and a twenty-four hour restaurant.²⁰⁰ In counties with less than 40,000 people, the establishment must have held a nonrestricted gaming license for at least five years and

190. *Id.* § 3(2)(A)–(C).

191. *See id.* § 3(2).

192. *Id.*

193. *Id.* § 6(1)–(2). The license for the manufacturer of an interactive gaming system is \$125,000, and may be renewed every year at \$25,000. *Id.* § 8(1)(A)–(3). The manufacturer of interactive gaming system equipment must pay a fee of \$50,000 for the first year, and the license is renewable every subsequent year for \$25,000. *Id.* § 8(1)(B).

194. Act of June 14, 2001, 2001 Nev. Stat. 593, § 3 (to be codified at NEV. REV. STAT. 463).

195. *See id.* § 3(4)(A).

196. *Id.*

197. *See County-by-County Breakdown of State's Population, Ethnicity and Racial Makeup*, LAS VEGAS REVIEW-JOURNAL (Mar. 14, 2001), at http://www.lvrj.com/lvrj_home/2001/Mar-14-Wed-2001/news/cbyc.html. The 2000 U.S. Census reveals Clark County's population to be about 1.4 million. *Id.*

198. *See* Act of June 14, 2001, § 3(4)(A).

199. *See County-by-County Breakdown of State's Population, Ethnicity and Racial Makeup*, LAS VEGAS REVIEW-JOURNAL (Mar. 14, 2001), at http://www.lvrj.com/lvrj_home/2001/Mar-14-Wed-2001/news/cbyc.html. Washoe County's population in 2000 was recorded at 339,468. *Id.*

200. *See* Act of June 14, 2001, §§ 3(4)(B), (4)(B)(2), (4)(B)(4).

have more than fifty rooms for sleeping accommodations or more than fifty gaming devices on the premises.²⁰¹ The statute also requires that an Internet casino operator maintain its online gaming operation in the same county in which the corresponding hotel or land-based casino lies.²⁰² Those who do not follow these requirements, or try to run an Internet casino without a license, face felony charges and a \$50,000 fine, 10 years imprisonment, or both.²⁰³

Finally, the new legislation also protects the operators, as it does not allow bettors to back out of debts incurred while gambling online, as the plaintiffs attempted to do in *In re Mastercard International Inc.*²⁰⁴ The Nevada legislature made certain that such debts are enforceable “by legal process.”²⁰⁵

V. NEVADA MAKES A GOOD BET, AND THE FEDERAL GOVERNMENT SHOULD FOLLOW SUIT

As Governor Guinn stated, Nevada has been the standard by which other states have modeled their regulations regarding legalized gambling.²⁰⁶ By passing legislation that paves the way for legalized—but closely regulated—Internet gambling within the state, Nevada sets an example for other states that may attempt to legalize Internet gambling within their borders.²⁰⁷ While the limitations for licensing set by Nevada indicate that the state will have very strict control over the licensing system for online casinos, the Nevada Gaming Commission has the difficult but realistic task of establishing requirements that will tackle public policy concerns.²⁰⁸

201. *Id.* §§ 3(4)(C)(1), (3)(I)–(II).

202. *Id.* § 3(5)(A)(2).

203. *Id.* § 3(7).

204. *See* 132 F. Supp. 2d 468, 473–75 (E.D. La. 2001); *see also* discussion *supra* Part III.A.2.

205. Act of June 14, 2001, § 4.

206. *See* Press Release, *supra* note 186.

207. *See* Press Release, Interactive Gaming Council, Azzolina-Asselta Measure Granting Atlantic City Casinos Internet Gambling Status Introduced (Nov. 11, 2001) http://www.igcouncil.org/read_news2.php?id=40. New Jersey Assemblymen Joseph Azzolina and Nicholas Asselta introduced legislation in November 2001 that would allow Atlantic City casinos to participate in Internet gambling. *Id.*

208. *See* Act of June 14, 2001, § 3; *see also* discussion *infra* Part V.B.

A. Nevada's Statutory Limitations on Internet Gambling Maintain Close Scrutiny over Cybercasinos

The specific limitations in the Nevada statutes demonstrate that while Internet gambling may create some concern regarding its potential abuses by both the gamblers and operators, tight regulations can keep those problems from getting out of control.²⁰⁹ For example, providing enforcement of Internet-related gambling debt gives credit card companies the backing they need to prevent debtors from escaping legitimate debts, like those incurred by the cardholders in *In re Mastercard International Inc.*²¹⁰

Furthermore, the statutes prevent non-recognized or non-licensed entities from entering the state and setting up independent Internet gambling operations.²¹¹ By requiring the operator to have a land-based establishment with a nonrestricted license,²¹² the government ensures it has potential recourse against a cybercasino that violates state gambling laws.²¹³ Additionally, under Nevada law, a violation of any gambling regulation may result in the revocation of *all* gambling licenses issued to a casino operator.²¹⁴ Therefore, a licensed Internet casino operator who violates a rule established by the Gaming Commission could be forced to close both its online gaming outfit as well as its land-based operation.²¹⁵

B. Legalized Internet Gambling Public Policy Concerns

As with any gambling-related venture, traditional public policy concerns result from legislation that creates and legalizes online gambling.²¹⁶ The traditional concerns include fraud, minors' access to Internet gambling, and gambling addiction.²¹⁷ Newer legal concerns brought on by technology include access by those residing in jurisdictions where Internet gambling is illegal and abuse of the user's privacy rights that stem from personal information stored by Internet gambling

209. See Act of June 14, 2001, §§ 2–9.

210. See 132 F. Supp. 2d 468; see also discussion *supra* Part III.A.2.

211. See Act of June 14, 2001, § 3.

212. See *id.*

213. See NEV. REV. STAT. 463.360 (1995).

214. *Id.*

215. See *id.*

216. See, e.g., Ferguson, *Privacy Concerns*, *supra* note 17.

217. See Theresa E. Loscalzo & Stephen J. Shapiro, *Internet Gambling Policy: Prohibition Versus Regulation*, 7 VILL. SPORTS & ENT. L.J. 11, 13–15 (2000).

operators.²¹⁸ Despite the variety and complexity of potential abuses that could arise from Internet gambling, Nevada drafted its statutes with ample protection for the general public, online gamers, and cybercasino operators.²¹⁹

1. Access by Minors

One major concern with Internet gambling is that it may be difficult to verify a player's age.²²⁰ Cybercasino prohibitionists argue that the "anonymous nature" of the Internet could allow minors to gamble online without an operator's knowledge.²²¹

While children could potentially steal their parents' credit cards and incur a substantial debt for the family, such a scenario is unrealistic.²²² Federal law provides that credit card holders are not liable for more than fifty dollars when their cards are used without their approval,²²³ even if the unauthorized user is the cardholder's child.²²⁴ Furthermore, a minor may cancel a contract for non-necessities.²²⁵ Because of these safeguards, a contract to pay any debts incurred by a minor via Internet gambling is virtually unenforceable.²²⁶ Thus, Internet casino operators have little incentive to entice minors to use their sites.²²⁷

Despite these safeguards, the Gaming Commission should develop a uniform scheme that enables operators to block minors from using their sites. These schemes may include requiring users to submit multiple forms of identification before they can wager or requiring operators to use credit-reporting databases to match taxpayer identification numbers with credit cards to verify the identity of the gambler.²²⁸

Another possibility would be to require the applicant to fax or present copies of birth certificates, driver's licenses, or other documents of

218. See Ferguson, *Privacy Concerns*, *supra* note 17.

219. See discussion *infra* Part V.B.

220. See Loscalzo & Shapiro, *supra* note 217, at 13–14.

221. *Id.*

222. *Id.* at 14.

223. See 15 U.S.C. § 1643 (2000).

224. See *Q's & A's On Internet Gaming*, Internet Gambler, at <http://www.internetgambler.com/legal.html> (last visited Nov. 16, 2001); see 15 U.S.C. § 1643 (2000).

225. See RESTATEMENT (SECOND) OF CONTRACTS § 14 (1981). Necessities are defined as "indispensable things of any kind." BLACK'S LAW DICTIONARY 1053 (7th ed. 1999).

226. Loscalzo & Shapiro, *supra* note 217, at 14.

227. See *Q's & A's On Internet Gaming*, Internet Gambler, at <http://www.internetgambler.com/legal.html> (last visited Nov. 16, 2001).

228. *Id.* Existing Internet casinos utilize these methods. *Id.*

identification before the operator processes any transaction.²²⁹ The sites could also require the bettor to post a deposit of a significant amount, such as \$1,000, before conducting any gambling transactions.²³⁰ These large deposits would deter minors from using online gaming sites because few minors have access to significant sums of money. In addition, these large deposits would also guarantee that only the people who can sustain their losses use the cybercasino.²³¹

Finally, the Gaming Commission could also require that Internet casino operators provide their users with software such as "SurfWatch,"²³² which blocks minors' access to inappropriate material like Internet wagering sites.²³³ While none of these methods can completely shield minors from Internet gambling,²³⁴ requiring some or all of these safeguards will have a strong impact on prohibiting minors from gambling on the Internet.²³⁵

2. Fraud

The potential for fraud in Internet gambling is a legitimate concern. Players could find difficulty in receiving their winnings²³⁶ and cannot be certain that the casino is operating its online games fairly and with the same degree of chance as land-based games.²³⁷ However, the Nevada statutes that require online casino operators to have a licensed land-based casino²³⁸ reassure users that they are placing their bets with accredited institutions in the gambling industry.²³⁹ As an added protection, the statutes provides that

229. *Id.*

230. *Id.*

231. *Id.*

232. Loscalzo & Shapiro, *supra* note 217, at 23. SurfWatch software filters access to Internet sites that can be described as belonging to any of five categories: sex, hate, violence, gambling, and drugs. *Smut Busters: CNET Tests Four Blocking Apps*, at <http://www.cnet.com/internet/0-3811-7-288576.html> (last visited Jan. 9, 2001).

233. *See* Loscalzo & Shapiro, *supra* note 217, at 23.

234. *Id.*

235. *See id.* Furthermore, adult gamblers prefer to patronize regulated sites where fraudulent practices, such as allowing bets by minors, are less likely to occur. *Id.*

236. *Id.* at 14–15.

237. Karadbil, *supra* note 180, at 439.

238. *See* Act of June 14, 2001, 2001 Nev. Stat. 593, § 3 (to be codified at NEV. REV. STAT. 463).

239. *See* Loscalzo & Shapiro, *supra* note 217, at 19–20; *see also* Mark G. Tratos, *Symposium: Gaming on the Internet*, 3 STAN. J. L. BUS. & FIN. 101, 116. "[I]f Caesar's Palace went on-line, consumer confidence in the casino's long operating history, reputation, and the ongoing scrutiny to which it is subject, would undoubtedly do much to raise the Internet gambler's confidence." *Id.*

an operator who commits fraud on its Internet gambling site risks losing the licenses to both its Internet and land-based casinos.²⁴⁰ Furthermore, while casinos outside the United States might escape penalties imposed by American laws and courts,²⁴¹ U.S. gamblers have an easier time obtaining relief against a casino regulated on and offline in Nevada.²⁴² This allows U.S. gamblers playing in a state where online gambling is authorized could easily seek relief against a cybercasino operator if they suspect that the site was defrauding them.

The Gaming Commission can establish other regulations to prevent fraud on Nevada Internet gambling sites.²⁴³ For example, the Gaming Commission could impose audits to ensure that cybercasino games and payouts are fair, as the statutes give the Gaming Commission the ability to adopt such regulations governing online gambling.²⁴⁴ Additionally, many software programs are available that can audit games online and in real time.²⁴⁵ Furthermore, the software code for games of chance—such as slot machines or blackjack—can be checked to ensure that the games are not rigged.²⁴⁶ Under its broad discretion, the Gaming Commission may also require regular checks on Internet gaming software.²⁴⁷

Casinos in Las Vegas regularly hold about eight percent of income on all games; the rest is paid out to the gamblers.²⁴⁸ Slot machines typically pay ninety to ninety-eight percent of the money placed in the machines.²⁴⁹ There are no limitations on the total amount of money held by an Internet casino, although such limitations do exist for land-based casinos.²⁵⁰ The Gaming Commission could require Internet casino operators to pay back a reasonable amount of the total money that users wager on games of chance, using land-based regulations as a guide.²⁵¹

240. See NEV. REV. STAT. 463.360 (1995).

241. See *supra* Part III.C.

242. See Loscalzo & Shapiro, *supra* note 217, at 20.

243. See Act of June 14, 2001, § 3.

244. See *id.*

245. Karadbil, *supra* note 180, at 439. One software company, Microgaming Systems has retained accounting firm Price Waterhouse Cooper to review the audits made by Microgaming software and publish regular reports on the payouts of casinos that use the software. See Microgaming, *Our Business Vision*, at http://www.microgaming.com/vision.shtml#bv_credibility (last visited Jan. 18, 2002).

246. Karadbil, *supra* note 180, at 439–440.

247. See Act of June 14, 2001, § 3.

248. Tratos, *supra* note 239, at 111.

249. *Id.*

250. *Id.*

251. See Act of June 14, 2001, § 3(1) (conferring broad powers to the Gaming Commission).

3. Gambling Addiction

With increased access to gambling provided by online casinos, one major concern is the heightened threat of gambling addiction.²⁵² Internet gambling could contribute to this problem because players often use credit cards, and thus there is no “tangible representation of money” such as betting chips for users to visualize how much they have won or lost.²⁵³ Unfortunately, a continued ban on Internet gambling in the United States cannot stop this problem,²⁵⁴ as gambling addicts still have access to cybercasinos outside the United States.²⁵⁵ Yet domestic regulation of Internet gambling sites can help ensure that regulated sites implement certain safeguards for this problem.

As with land-based casinos, there is no absolute cure to gambling addiction, but the Gaming Commission can take preventative measures to help curb gambling addiction when it occurs on the Internet. One method is to set a time and money limit to which each cybercasino visitor must adhere.²⁵⁶ Another technique is to require that Internet casinos prominently display throughout their sites links to organizations designed to help gambling addicts, such as Gamblers Anonymous.²⁵⁷ Of course, links to these support groups only work if players use them.²⁵⁸ While unregulated Internet gambling sites are not required to have such links, the Gaming Commission has the power to require regulated Nevada online casinos to prominently feature links to gambling addiction sites.²⁵⁹

The data tracking technology that is available for Internet casino operators can also help spot and block access by compulsive gamblers.²⁶⁰ Cybercasinos can preserve records of excessive gambling or gambling debts indefinitely.²⁶¹ Such tracking is actually more reliable than the pit boss’ memory, which is the current source of reliability that land-based casinos use to combat compulsive gamblers.²⁶² Tracking technology can

252. See Karadbil, *supra* note 180, at 438–39.

253. *Id.* at 439.

254. See Loscalzo & Shapiro, *supra* note 217, at 20.

255. See discussion *supra* Part III.C.

256. See Loscalzo & Shapiro, *supra* note 217, at 24.

257. See *Gamblers Anonymous Official Home Page*, at <http://www.gamblersanonymous.org> (last visited Mar. 15, 2002).

258. Loscalzo & Shapiro, *supra* note 217, at 24.

259. See Act of June 14, 2001, 2001 Nev. Stat. 593, § 3(1) (to be codified at NEV. REV. STAT. 463) (conferring broad powers to the Gaming Commission).

260. Karadbil, *supra* note 180, at 439.

261. *Id.*

262. *Id.*

also limit the user's bets or send messages to the gambler, suggesting that the player seek help.²⁶³

Requiring such technology on the Internet would give the Gaming Commission power to do more than merely prevent the spread of gambling addiction on the Internet. The Gaming Commission could actually create a method of intercepting, confronting, and treating gambling addicts in a way that cannot be accomplished in land-based casinos.²⁶⁴

4. Verification of Location

Enforcing the requirement that the gambler resides in a jurisdiction where Internet gambling is legal also poses a problem to an Internet casino.²⁶⁵ Users may call foreign ISPs to make it appear as if they were calling from a jurisdiction where Internet gambling is legal.²⁶⁶ However, the Gaming Commission has the power to overcome this problem.²⁶⁷ For example, the Gaming Commission may require cybercasinos to cross-check multiple forms of identification.²⁶⁸ More specifically, Internet casinos could cross-check a person's address through a driver's license number, bank account information, credit card number, or utility bill.²⁶⁹ This would prevent users from accessing the Internet gambling sites from unauthorized locations.

Furthermore, programmers have developed other technology that can determine whether a user plays from the same jurisdiction as the ISP.²⁷⁰ By ensuring that the caller and the caller's ISP are from the same jurisdiction, a cybercasino can allow the user access only if that jurisdiction recognizes legal Internet gambling.²⁷¹ By requiring this or similar technology, the Gaming Commission can further ensure that Internet bets are only made

263. See David Strow, *Web Offers Dangers to Problem Gamblers*, LAS VEGAS SUN (April 20, 2001), at <http://www.lasvegassun.com/sunbin/stories/text/2001/apr/20/511721927.html>.

264. See *id.* This technology will also give regulators the opportunity to study gambling patterns of gambling addicts. *Id.* Gambling analyst Sebastian Sinclair, of the Christiansen Capital Advisors and Gemini Research, said by using this technology, "[w]e'll know more about problem gambling than we've ever known before . . ." *Id.*

265. See discussion *supra* Part III.C.

266. See discussion *supra* Part III.C.

267. See Ferguson, *Privacy Concerns*, *supra* note 17.

268. *Id.* (referring to statements of Stephen Williams, chief technology advisor of the Interactive Gaming Institute of Nevada and former chief technology officer of America Online).

269. *Id.*

270. See Matt Ritchell, *High Stakes in the Race to Invent a Bettor-Blocker*, N.Y. TIMES, June 28, 2001, at G-6. Virtgame.com, a San Diego-based company, claims to have developed this technology. *Id.*

271. See *id.*

from legal jurisdictions.

5. Privacy Concerns

Databases and tracking technology to verify the gambler's age,²⁷² location,²⁷³ and potential gambling abuse²⁷⁴ create the potential for abuse of a cybergambler's privacy.²⁷⁵ For example, tracking technology appears necessary to restrict access to underage users and prohibit gambling from jurisdictions where Internet gambling remains illegal.²⁷⁶ Despite this need, the Gaming Commission could set limits on what online wagering sites can do with a gambler's information, and require those operators to disclose their intentions for use of the personal information on their sites.²⁷⁷ Such disclaimers may force Internet gamblers to consider whether making a bet online is worth giving up their personal information and privacy.²⁷⁸

C. Doubling Down: Benefits of Regulated Internet Gambling for Nevada

1. Keeping Gambling in Nevada

By enacting Internet gambling legislation, the Nevada legislature has shown concern that it desires to keep gambling revenue in its state.²⁷⁹ Some well-known Las Vegas-based casinos have looked outside the United States to establish Internet gambling operations.²⁸⁰ As gaming officials

272. See discussion *supra* Part V.B.1.

273. See discussion *supra* Part V.B.4.

274. See discussion *supra* Part V.B.3.

275. See Ferguson, *Privacy Concerns*, *supra* note 17. Members of the Nevada Gaming Control Board were taken aback by the idea of a database of "known" problem gamblers, an industry-mandated procedure used by cybercasinos based in Australia. *Id.*

276. See discussion *supra* Parts V.B.1, V.B.4.

277. See Act of June 14, 2001, 2001 Nev. Stat. 593, § 3(1) (to be codified at NEV. REV. STAT. 463) (conferring broad powers on the Nevada Commission). Such information could be accessed through a link prominently displayed on the cybercasino's home page, or perhaps included on the Web page that a player uses to register for admission to the site.

278. See Jeri Clausing, *Internet Makes an Easy Target for Lobbyists and Lawmakers*, N.Y. TIMES, Nov. 22, 1999, at C-1. Harris Miller, executive director of the Information Technology Association of America, asserted that Internet companies are cautious about what they do with the private information of their users. *Id.* Miller says users who do not like what an Internet site does with their personal information can always leave that site for one they can trust. *Id.*

279. See *Playboy*, *Viacom Getting into Internet Gambling Market*, LAS VEGAS SUN (Sept. 27, 2001), <http://www.lasvegassun.com/sunbin/stories/text/2001/sep/27/902710764.html> [hereinafter *Playboy*]; see, e.g., *Safety Net*, *supra* note 84. MGM Mirage, the largest owner casinos on the Las Vegas Strip, announced plans in September of 2001 to set up an online gaming operation based on the Isle of Man off the coast of the United Kingdom. *Id.*

280. See *Safety Net*, *supra* note 84.

expressed their regret for having lost that revenue,²⁸¹ online gaming regulations may prevent future casino owners from looking outside the United States to expand their gambling operations. Many non-gambling companies, such as Playboy and Viacom, have already established virtual casinos outside the United States in jurisdictions where online gambling is legal.²⁸² Therefore, existing casinos must quickly establish their own online gambling sites before these non-gambling companies saturate the Internet gambling market.²⁸³ However, because Internet gambling still remains illegal in Nevada and the other forty-nine states,²⁸⁴ existing Nevada-based land casinos' only choices are to either establish their online operations outside the United States or wait until Nevada legalizes online gambling.²⁸⁵

2. Gamblers in Other States and Abroad

In October 2001, the Nevada Gaming Control Board announced that in a study of the laws of the other forty-nine states, none had provisions allowing online betting by persons within the state.²⁸⁶ However, this finding has not discouraged those planning to set up Internet gambling operations in Nevada²⁸⁷—and it should not. As Governor Guinn stated, Nevada is paving the way for other states.²⁸⁸ If Nevada's venture is successful and popular enough, it seems likely that other state governments will find ways to make Internet gambling legal within their own borders.²⁸⁹

The Wire Act allows gambling via interstate transmission only when gambling is legal in both the jurisdiction where the bet is made and the

281. *Playboy*, *supra* note 279. Scott Scherer, a member of the Nevada Gaming Control Board, stated, "I wish they would have kept their business here." *Id.*

282. *Id.*

283. *Id.*

284. *See* discussion *supra* Part III.B; *see also* discussion *infra* Part V.C.2.

285. *See Playboy*, *supra* note 279. Gambling industry analyst Sebastian Sinclair stated in September 2001 that Nevada casinos have about twelve months to establish their online gambling operation before other non-gaming companies dominate the cybercasino market. *Id.*

286. *Nevada Regulator Says Other States Don't Allow Cyber Gambling*, LAS VEGAS SUN (Oct. 16, 2001), at <http://www.lasvegassun.com/sunbin/stories/archives/2001/oct/16/101610290.html>.

287. *Id.* "Richard Fitzpatrick, president of the Interactive Gaming Institute of Nevada, said potential Nevada operators initially plan to focus on the international market rather than the other 49 states." *Id.*

288. *See* Press Release, *supra* note 186.

289. *See, e.g.*, Press Release, Interactive Gaming Council, Azzolina-Asselta Measure Granting Atlantic City Casinos Internet Gambling Status Introduced (Nov. 11, 2001) http://www.igcouncil.org/read_news2.php?id=40.

jurisdiction where the bet is received.²⁹⁰ Likewise, the Nevada statutes state that Internet gambling is permissible only when the bettor places the bet from a jurisdiction that recognizes legal Internet gambling.²⁹¹ Therefore, once the Gaming Commission has determined that it can adopt regulations for Internet gambling,²⁹² Nevada cybercasinos will only be able to accept wagers from residents of Nevada or foreign countries where Internet gambling is legal.²⁹³

Nevertheless, by allowing Nevada casinos to host online gambling sites in an international market, the success and popularity of such sites could attract foreign gamblers to the major land-based casinos, creating an increase in tourism.²⁹⁴ While many people might find gambling itself to be exciting, some might find gambling more enjoyable when coupled with a visit to a Las Vegas show. Indeed, Las Vegas advertisements are more successful online when placed in conjunction with some kind of gaming site.²⁹⁵

In the past, state governments have legalized gambling when the economy faced a downturn.²⁹⁶ In the Reconstruction era and during the Great Depression, governments viewed legalized gambling as a way to generate income.²⁹⁷ To a lesser degree, the United States may be facing similar times.²⁹⁸ The terrorist attacks on September 11, 2001 had a direct effect on the American economy, prompting a decrease in consumer spending and many employee layoffs.²⁹⁹ In the weeks following the terrorist attacks, Las Vegas weekend hotel occupancy rates, which normally rank at around ninety-five percent in the fall season, dropped to

290. See 18 U.S.C. § 1084(a)-(b) (1994).

291. See NEV. REV. STAT. ANN. 465.092-465.094 (Michie 2001).

292. See Act of June 14, 2001, 2001 Nev. Stat. 593, § 3 (to be codified at NEV. REV. STAT. 463).

293. See *Nevada Regulator Says Other States Don't Allow Cyber Gambling*, LAS VEGAS SUN (Oct. 16, 2001), at <http://www.lasvegassun.com/sunbin/stories/archives/2001/oct/16/101610290.html>.

294. See *Internet Casinos*, *supra* note 7. Gaming analyst Marc Falcone notes the success of "play-for-fun" casinos and how such sites can be used for cross-promotion for special vacation deals at Las Vegas hotels and casinos. *Id.*

295. See *id.*

296. See discussion *supra* Part II.A.

297. See discussion *supra* Part II.A.

298. See *Economy Is Still Teetering Near Recession, Data Show*, N.Y. TIMES, Sept. 29, 2001, at C-2.

299. See *id.*; see also *Hotels, Airports Filling Up; But Analysts Say Vegas Rebound Slow*, LAS VEGAS SUN (Oct. 18, 2001), at <http://www.lasvegassun.com/sunbin/stories/archives/2001/oct/18/101810917.html>. An estimated 15,000 Las Vegas Strip workers were laid off in the weeks following the terrorist attacks. *Id.*

seventy-five percent.³⁰⁰ Although experts expected tourism to normalize by the end of 2001, the lapse in tourism has demonstrated the need to increase the capability of Las Vegas casinos to market their gambling enterprise, especially when tourists are more reluctant to travel to land-based casinos.³⁰¹ This slump in Nevada's economy also demonstrates the state's need to expand gambling operations in its state, and the Internet is the best way to accomplish this expansion.

VI. BETTING AGAINST THE HOUSE: THE FEDERAL GOVERNMENT'S ROLE REGARDING NEVADA'S LEGISLATION

Currently, federal law does not prohibit Nevada from legalizing Internet gambling when practiced within its own state or in connection with a foreign jurisdiction that has legalized online betting.³⁰² Potentially, continued opposition to Internet gambling by Congress may prevent other states from joining in Nevada's venture into cyberspace.³⁰³ However with some exceptions, America's gambling history has shown that the federal government has largely left gambling regulation to the states.³⁰⁴ The same should apply to Internet gambling. The fact that Nevada has already created strict requirements on the legalization of gambling indicates that it takes a very serious approach to this subject. Moreover, Nevada understands and desires the economic effect of legalizing this form of gambling³⁰⁵ and the federal government should allow Nevada to take full advantage of this opportunity.

Other states may soon gain incentives to follow Nevada's lead. In November of 2001, President Bush and Congress extended a moratorium prohibiting the taxation of Internet-related commerce until October of

300. Snedeker, *supra* note 21.

301. *See* *Hotels, Airports Filling Up; But Analysts Say Vegas Rebound Slow*, LAS VEGAS SUN (Oct. 18, 2001), at <http://www.lasvegassun.com/sunbin/stories/archives/2001/oct/18/101810917.html>. The passenger levels at McCarran Airport—which brings in about forty-six percent of Las Vegas' tourists—were only at ninety-one percent of normal for the week ending Oct. 9, 2001, about one month after the terrorist attacks. *Id.*

302. *See, e.g.*, 18 U.S.C. § 1084(b) (1994). Interstate or international transmission of a wager is allowed when the states in which the bet is placed and received both allow such betting. *Id.*

303. *See* discussion *supra* Part III.A.1.

304. *See* discussion *supra* Part II.A (discussing instances of corruption in the gambling enterprise and the government's response to it).

305. *See* Wagner, *supra* note 6. Gambling analyst Sebastian Sinclair predicts that Nevada could make \$231 million in tax revenues from Internet gambling if sites based in the state are launched by 2003. *Id.*

2003.³⁰⁶ The expiration of the ban in 2003 might give Congress the opportunity to pass a law that would allow states to tax gamblers who participate in online gambling.³⁰⁷ Creating new tax revenues for states would provide an incentive for legalizing online gambling within a state, even if that state does not want to allow Internet gambling site hosting within its borders.

Nevada has shown that it can address problems involving illegalities relating to Internet gambling.³⁰⁸ For example, when misappropriation occurs in a Nevada-based online casino, the state retains the authority to close *all* of the operator's gambling operations, both online and land-based.³⁰⁹ Furthermore, the state has ordered that the Gaming Commission not permit online gaming until it is certain that regulations on cybercasinos comply with all applicable laws, including the laws of other states and the federal government.³¹⁰ By enacting such Internet gambling legislation,³¹¹ Nevada has asserted its right to legalize Internet gambling.

Conflicting regulations among states could result if the federal government leaves Internet gambling to the states. Such conflicts could result in an Internet gambling operation in one state struggling to comply with the regulations in another state. Fortunately, public organizations such as the Interactive Gaming Council ("IGC")³¹² ensure that interactive gaming sites follow a uniform code of conduct that is in compliance with laws and regulations of all jurisdictions where gaming sites conduct business.³¹³ States that wish to legalize Internet gambling can require that operations based in other states follow the guidelines established by the IGC or a similar organization. In doing so, a state can ensure that its

306. Rick Henderson, *New Tolls on the Info Superhighway?*, LAS VEGAS REVIEW-JOURNAL, Dec. 9, 2001, at 2E.

307. See Michael P. Kailus, *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 ILL. L. REV. 1045, 1068 (1999). Currently, the United States Supreme Court has made it illegal for states to force out-of-state businesses to collect its sales tax unless that business has a physical presence, or "nexus" in that state. Curt Anderson, *Internet Tax Ban Set to Expire* (Oct. 19, 2001), at http://news.findlaw.com/ap_stories/high_tech/1700/10-19-2001/20011019001504200.html. However, many local governments want Congress to give them authority to tax out-of-state Internet businesses. *Id.*

308. See *supra* Part III.B.

309. See NEV. REV. STAT. ANN. 463.360 (Michie 2001).

310. See Act of June 14, 2001, 2001 Nev. 593, § 3 (to be codified at NEV. REV. STAT. 463).

311. See *id.*

312. *About Us*, Interactive Gaming Council, at <http://www.igcouncil.org/aboutus.php> (last visited Nov. 18, 2001). The IGC is a not for profit corporation whose purpose is "to establish, promote and enforce a uniform code of conduct" for members of the worldwide interactive gaming community. *Id.*

313. See *Code of Conduct*, Interactive Gaming Council, at <http://www.igcouncil.org/aboutus.php?do=conduct> (last visited Nov. 18, 2001).

citizens are protected against consumer fraud and other potential improprieties.³¹⁴

The federal government should learn from Nevada's example and recognize that a state has the ability and the authority to create and enforce regulations on Internet gambling.³¹⁵ If Congress is concerned about the potential negative effects of Internet gambling, it should establish guidelines for states, including requiring an age minimum and spending limits for wagers that cross state lines. As an alternative to banning online gambling, Congress could establish a model for states in monitoring out-of-state or foreign gamblers online. The federal government should also give the states and Internet gambling operations a chance to establish safe and effective structures for running Internet gambling sites within a specific jurisdiction. It should also begin with Nevada as a basic model for all other states. If these safeguards appear to be failing, Congress should then—and only then—begin to consider steps to remedy problems from Internet gambling.

VII. CONCLUSION

The Review Commission reported in 1976 that “gambling is inevitable.”³¹⁶ The same is also true about Internet gambling. With or without support from United States federal and state governments, Internet gambling will continue to grow, as this form of gambling has already taken off around the world.³¹⁷ Nevada's legislature overcame one major step in its quest to legalize Internet gambling within the United States by giving its Gaming Commission authority to investigate and establish regulations for Internet gambling.³¹⁸ While Nevada must move carefully in establishing guidelines for interactive gaming, it must also proceed quickly so that Internet gambling becomes an established institution before the federal government has another opportunity to prohibit it.³¹⁹ Speedy

314. *See id.* The IGC's Code of Conduct requires that its members, among other things, publish only accurate information regarding registration procedures and payout percentages, as well as making their systems available for inspection by any “legitimate gaming commission or governmental authority.” *Id.*

315. *See* Act of June 14, 2001, §§ 2–9.

316. GAMBLING IN AMERICA, *supra* note 1, at 1.

317. *See* Doug Bedell, *U.S. Gaming Industry Wants in on Virtual Casinos but Faces Hurdles*, DALLAS MORNING NEWS, July 24, 2001. Expected revenues for online gambling could reach \$6.3 billion by 2003. *Id.*

318. *See* Act of June 14, 2001, §3.

319. *See* discussion *supra* Part III.A.1.

implementation of legal Internet gambling will give Nevada and online gambling operations the opportunity they need to prove to the rest of the country that a regulated Internet gaming system can be lawful and successful.

*Craig Lang**

* This Comment is dedicated to the memory of my grandfather, Curtis Eugene Guill. I would like to thank my parents Clarence and Kathy, my brother Chris, and the rest of my family, whose encouragement and support have always been an inspiration. I would like to thank the editors and staff of the Loyola of Los Angeles Entertainment Law Review for their assistance, with special thanks to Tom Werner, Brian E. Pellis, Leah Phillips Falzone, Graham B. Smith, Norma Copado, Mary Sakaguchi, and Cyndie Chang. I would also like to thank Prof. John Nockleby, who remained objective in his guidance and analysis in the early development of this Comment, despite his opposing viewpoint on this issue. Finally, I would like to thank Diana Cobar, whose love, patience and tennis game have never faltered.