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Jay Cohen's Brave New World: The Liability of Offshore Operators of Licensed Internet Casinos for Breach of United States' Anti-Gambling Laws

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I. INTRODUCTION

{1} On February 28, 2000, Jay Cohen, co-owner of an Antiguan-based Internet casino called World Sports Exchange, was convicted by a U.S. District Court jury in Manhattan of breaching the *Wire Communications Act of 1961*[1] (hereinafter Wire Act).[2] A New York federal judge subsequently fined Cohen $5,000 and sentenced him to serve a twenty-one month jail term.[3] A few days prior to his conviction, Cohen's lawyer stated that "Jay strongly believes that he did not commit a crime, that he ran [World Sports Exchange] in a completely legitimate manner."[4]

{2} Cohen's belief in the legitimacy of his licensed operation is one shared by a number of licensed Internet gaming operators. Commenting on Cohen's conviction, David Ohlson, Special Projects Manager for Lasseter's Online, Australia's first licensed Internet casino, stated that he was "not unduly worried" about the court's decision even though Lasseter's Online transacts with gamblers in the U.S.[5] Similarly, giving evidence before Australia's Senate Select Committee on Information Technologies on October 1, 1999, James Colquhoun, Chairman of Canbet Pty Ltd, an Internet sports wagering business licensed under the laws of the Australian Capital Territory, expressed his view that "[t]he offer [of a wager] in the U.S. is a perfectly legal offer and the acceptance of that offer by Canbet under its license in the ACT [Australian Capital Territory] is perfectly legal and therefore both ends of the contract are legal." [6]

{3} This paper will consider the circumstances in which an Internet casino that is operating under a valid offshore license and accepts bets from people residing in the U.S. may contravene U.S. anti-gambling laws. [7] In particular, it will consider the operation of the Wire Act [8] and the proposed Internet Gambling Prohibition Act of 1999.[9] It will conclude that U.S. courts are likely to have jurisdiction to try actions for breach of anti-gambling laws against offshore operators of licensed Internet casinos that transact with U.S. residents, but will have difficulty enforcing those laws against those operators.

{4} This paper will first contrast the regulatory environment for Internet casinos in Australia and the U.S.

Australia provides an interesting counterpoint to the U.S. regulatory regime because of the markedly different approach that it adopts to Internet gaming and because, unlike some countries that currently license Internet gaming operators, it is difficult to criticize the legitimacy or sophistication of its licensing regime.

{5} Secondly, this paper will consider whether U.S. courts will be competent to hear actions for breach of anti-gaming laws against offshore Internet casinos; that is, whether those courts will be able to assert the requisite "subject matter jurisdiction" over those casinos.

{6} Thirdly, this paper will consider the jurisdictional reach of U.S. anti-gaming laws over licensed operators of offshore Internet casinos; that is, whether the necessary element of "personal jurisdiction" will be present.

{7} Finally, this paper will address the issue of whether U.S. anti-gambling laws will be enforceable against operators of licensed offshore Internet casinos.

II. AUSTRALIAN AND U.S. REGULATORY REGIMES

A. *Australian Regulatory Regime*

{8} Historically, Australian gaming regulation has been the province of the various Australian State and Territory Governments because the Commonwealth Constitution does not give the Commonwealth power in respect to gaming. The size and long history of gaming in Australia have allowed each State and Territory to develop significant regulatory regimes and a "high level of expertise across a range of areas, including economic and social policy."[10]

{9} The existence of a well-established regime for regulation of traditional forms of gambling facilitated Australia's rapid and robust response to the development of Internet gaming. In May 1997, gaming ministers representing each Australian State and Territory released a draft model for regulating Internet gambling.[11] Subsequent to the release of that model, five of Australia's eight States and Territories, beginning with Queensland, whose Interactive Gambling (Player Protection) Act of 1998 commenced operation on October 1, 1998, have enacted comprehensive legislation regulating Internet gaming.
The Australian Internet gaming industry can be characterized as being subject to stringent regulation by sophisticated and experienced regulatory bodies. That regulation focuses on minimizing harm to problem gamblers, and on ensuring that the industry operates within the bounds of Australian laws which apply to traditional casinos. Accordingly, "the companies are solvent, the games are fair, and the winners can claim their loot."[12]

{10} The Commonwealth Government has, however, expressed "grave concerns about the potential for online gambling to exacerbate already high levels of problem gamblers in Australia."[13] Accordingly, on August 17, 2000, in reliance on its power to legislate with respect to "postal, telegraphic, telephonic, and other like services,"[14] the Commonwealth Government introduced the Interactive Gambling (Moratorium) Bill 2000 (Cth). The intention of the Bill was to "pause the development of the Australian-based interactive gambling industry while an investigation into the feasibility and consequences of banning interactive gambling is conducted."[15] After intense political lobbying, the Bill finally passed the House of Representatives on December 7, 2000. By that time more than half of the moratorium period had already elapsed. Despite the temporary cessation of licensing as a result of the passage of the Bill, the Australian Internet gaming industry continues to flourish.[16]

B. *U.S. Regulatory Regime*

{11} In contrast to the approach adopted in Australia, U.S. legislators have, almost without exception,

advocated prohibiting Internet gambling. Joseph Kelly notes that, during the course of the Senate debate over the introduction of the IGPA, "not one senator suggested regulating, rather than prohibiting Internet gambling."[17] This strict approach is consistent with the approach historically taken to regulation of traditional forms of gambling.

{12} Numerous U.S. statutes potentially prohibit, either directly or indirectly, Internet gambling. The U.S. Department of Justice has claimed that Internet gambling is illegal under at least four federal statutes.[18] To name a few, the Interstate Transportation of Wagering Paraphernalia Act,[19] Professional and Amateur Sports Protection Act[20] and the Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act,[21] may all proscribe some aspect of the activities of an Internet casino.

{13} The Wire Act is the most important legislative prohibition on Internet gaming, however, and it is this Act that regulators have primarily relied on to obtain the convictions of Internet gaming operators. Similarly, a number of Bills which, directly or indirectly, prevent Internet gambling are currently before the U.S. Congress, but the most significant, and the one closest to enactment, is the IGPA.

(i) The Wire Act

{14} The Wire Act potentially prohibits Internet gaming operators from using the Internet for gaming. It provides, in relevant part, that:

> 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 . . . shall be fined under this title or imprisoned not more than two years, or both.[22]

The proscribed conduct is, therefore, the use of a wire communication facility to facilitate betting by a person operating a gaming business. A "wire communication facility" is defined as a system that is used to transmit writings, pictures and sounds "by aid of wire, cable or other like connection between the points of origin and reception of such transmission."[23]

{15} Two significant issues arise in relation to the application of the Wire Act to Internet gaming operators. First, it is arguable that the Wire Act only applies to betting or wagering on sporting events or sporting contests and, therefore, is inapplicable to online casino games. No reported cases have directly addressed the issue of whether the Wire Act relates to non-sport related gambling.[24] In his Congressional testimony in relation to the IGPA, the Deputy Assistant to the Attorney General, Kevin Di Gregory, identified this issue as one of the key problems with the Wire Act and urged that the Wire Act be amended to eliminate any doubt about whether it only applies to bets or wagers on sporting events or contests.[25]

{16} In one view, the word "sporting" is used as an adjective to qualify both the words "event" and "contest," and the Wire Act is, therefore, confined to sporting events and sporting contests. Olson argues that this view accords with "the plain meaning of the statute."[26] Alternatively, "sporting event" and "contest" could be viewed as two separate references. If this is the case, the Wire Act would apply to online games offered by Internet casinos.

{17} The legislative history of the Wire Act provides some assistance. For instance, Congressional references to the Wire Act at the time of its enactment focus specifically on sporting-related gambling activity.[27] Moreover, Congress was aware of other forms of gaming, including, for example, the number's racket, which utilized telephone lines. Cabot argues that, because Congress was aware of those other forms of gambling and did not expressly address them, it must not have intended that the Wire Act be interpreted broadly to apply to non-sport related gambling.[28] In contrast, Bruce P. Keller argues that, because Congress was aware of other

forms of gambling, the Wire Act should be interpreted broadly as it would be unlikely that Congress would intend to carve out those other forms of telephone-based gambling.[29]

{18} Proponents of Cabot's view submit that it is to be preferred because it does not require imputing an intention to Congress on the weak ground that it would have been obvious to include something; therefore, Congress must have intended to include it. Nevertheless, the uncertainty in this regard somewhat undermines the potential to use the Wire Act to prosecute Internet casinos.

{19} The second interpretive issue in relation to the application of the Wire Act to Internet casinos is whether the definition of "wire communication facility" is broad enough to cover all communications over the Internet. Again, Di Gregory, in his testimony on the IGPA before Congress, identified this as a significant issue requiring clarification by amendment to ensure that even wireless Internet communications are covered by the Wire Act.[30]

{20} Clearly, those Internet communications which are facilitated by modem connections to copper wires will be covered by the Wire Act. Radio, satellite, microwave and other wireless means of transmission, however, may not be covered. An Internet gaming system which relies on a wire-free communication system, for example by utilizing Wireless Application Protocol or General Packet Radio Service technology, appears, on the face of it, to fall outside the ambit of the Wire Act.

{21} A defendant who utilizes a wireless means of communication, and relies on that as a defense to an action for breach of the Wire Act, however, will have a difficult argument to mount. First, the Wire Act does not require that the entire communication be conducted over wires or cables. Even if a small portion of the communication utilizes wires or cables, the transmission will fall within the scope of the Wire Act. Cabot argues that the very operation of the Internet backbone, which underlies all Internet communications, may constitute a "wire communication facility" under the Wire Act.[31]

{22} Second, the reference in the Wire Act to "other like connection" could be interpreted as indicating that wireless forms of transmission, which utilize different media so as to perform the same function, are sufficiently similar to wire or cable connections to fall within the operation of the Wire Act. The argument supporting this view indicates that Congress would have intended the Wire Act to apply to new forms of communication as they developed.[32]

{23} Despite the divergent views of commentators, the official position as expressed by the Justice Department and several state attorneys general is to treat the Wire Act as applying broadly and covering all forms of Internet gaming.[33] Accordingly, the uncertainty in the application of the Wire Act is unlikely to dissuade prosecutors from employing it to bring actions against Internet casinos.

(ii) The Internet Gambling Prohibition Act

{24} The IGPA, first introduced into the Senate in 1995, passed the Senate unanimously on November 19, 1999. On July 17, 2000, however, the House version of the IGPA failed to achieve the two-thirds majority vote required for it to become law. Although it was anticipated that the House version would come up for another vote in September[34], at the time of writing the September Congressional session had concluded without any further action. At that time, it was unclear when the House would next consider the IGPA or what support it would receive within the newly elected Bush government.

{25} If and when it becomes law, the IGPA will add a new Section 1085 to Title 18 of the United States Code. The new section will make it unlawful for any person engaged in a gambling business to knowingly use the Internet to place, receive, or otherwise make a bet or wager, or to send, receive, or invite information

assisting in the placing of a bet or wager.[35] The Bill imposes a penalty of up to four years imprisonment, fines of up to $20,000 or both.[36] Further, the Bill gives a court the power to issue a permanent injunction against a person who violates the prohibition, preventing them from engaging in further betting activity.[37] Similarly, the Bill allows regulators to seek injunctions preventing Internet Service Providers from hosting a gambling website.[38]

{26} The IGPA contains a number of exceptions. It does not apply to state lotteries, parimutuel betting on certain types of computer networks, horse and dog racing, fantasy sports leagues and certain types of Indian gaming.[39]

{27} These exceptions have led some anti-Internet gaming activists to condemn the IGPA. Conservative, anti-gambling Republican Chris Cannon, for example, has commented that the IGPA "should be called the Internet Gambling Preservation Act instead."[40] Similarly, Di Gregory notes that, ironically, the IGPA "will allow gambling online that currently is not allowed in the physical world."[41]

{28} Both the Wire Act and the IGPA, although limited in some respects, have the potential to be used to prosecute offshore Internet casinos. The next question is whether United States courts will have jurisdiction to hear actions brought under those legislative provisions against licensed offshore Internet casinos.

III. SUBJECT MATTER JURISDICTION

{29} For a United States court to exercise jurisdiction over an offshore Internet casino, the court must be satisfied that it has both subject matter jurisdiction and personal jurisdiction.[42] Subject matter jurisdiction refers to the competency of the court to adjudicate the matter before it.

{30} This section will first consider instances where an Internet gambling transaction with a United States' resident takes place. If the transaction takes place within the country's borders, United States courts will have subject matter jurisdiction. Second, this section will consider whether, if the transaction takes place outside the United States, the relevant anti-gaming laws apply extraterritorially.

A. *Locus of Activity*

{31} United States courts have not yet established the criteria for determining where an offense committed "in cyberspace" actually occurs.[43] The question is significant because it presents a critical policy choice between the rights of consumers of Internet content and the rights of providers of Internet content.[44]

{32} Jack Goldsmith has correctly asserted that Internet transactions "involve people in real space in one territorial jurisdiction transacting with people in real space in another territorial jurisdiction in a way that sometimes causes real-world harms."[45] Elements of an Internet gambling transaction are likely to occur across a number of jurisdictions, however, and identification of a specific jurisdiction in which the act of infringement actually occurs must, to some extent, be artificial.

{33} An Australian Internet casino licensed under the laws of the State of Queensland, for example, is likely to have a server located in the state in which the information relating to the transaction is processed. The casino's website may be hosted in another Australian state or in another country. Information passing between the casino and a gambler in the United States is likely to pass through servers in a number of jurisdictions before reaching the Internet Service Provider of a gambler in the United States. That gambler's Internet Service Provider may be located in a national or state jurisdiction distinct from the one in which the gambler who transacts with the casino is located.

{34} In gaming cases, United States' courts have tended to identify the place of infringement as the place of downloading. In *Vacco v. World Interactive Gaming*,[46] for example, the court rejected World Interactive Gaming's argument that it did not violate New York law because the gambling over its website occurred in Antigua, where the computer servers were located. The court, focusing on the gamblers rather than the casino, held that "[t]he acts of entering the bet and transmitting the information from New York via the Internet [were] adequate to constitute gambling activity within New York state."[47] Clearly, such an approach favors the interests of gaming regulators.

{35} Furthermore, in *Vacco* the court was explicit about the policy considerations underlying its findings. The court asserted that "[a] computer server cannot be permitted to function as a shield against liability."[48] The court's view echoes the view of enforcement agencies, as expressed by United States Attorney General, Janet Reno, that "the Internet is not an electronic sanctuary for illegal betting."[49]

{36} At least one case, however, has adopted the contrary approach. In *U.S. v. Truesdale*[50] the court considered an action for, among other things, illegal gambling in violation of Section 1995 of Title 18 of the United States Code. The case involved defendants who operated an Internet sports betting site called World Sports Book from offices in the Dominican Republic and Jamaica. The court, focusing on the actions of the casino, stated that "it is irrational to conclude beyond a reasonable doubt that after having gone through the effort of fully equipping, staffing and widely advertising the Caribbean offices, the appellants, nevertheless, illegally accepted bets in the United States."[51] Kelly notes that the result may have been different if the defendants had been charged with a violation of the Wire Act.[52] Nevertheless, *Truesdale* indicates that there may be an argument that, where an offshore Internet gaming operation transacts with a United States' resident, the transaction does not occur within the United States.

{37} If United States courts take the view, of the *Truesdale* court, that the place at which the proscribed activity takes place is the server of the offshore Internet casino, they will have to apply the relevant anti-gaming laws extraterritorially. Accordingly, a court will need to determine whether such extraterritorial application is congressionally mandated and complies with the "effects test."[53] The legality of the activity will be irrelevant to this inquiry.

B. *Power to Legislate Extraterritorially*

{38} It is well established that the United States Congress has the power to enact laws that operate extraterritorially.[54] The Commerce Clause is the basis of that power. It authorizes Congress "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[55]

{39} Although a superior Federal court is yet to rule on the matter, it is likely that the extraterritorial power of Congress extends to the regulation of Internet gaming. In *Champion v. Ames*, [56] the Supreme Court established that the Commerce Clause gives Congress power to legislate with regard to illegal gambling generally between the United States and a foreign location. Furthermore, the recent Supreme Court decision in *United States v. Edge Broadcasting*[57] removes any doubt that the Commerce Clause extends to transactions over the Internet. Because the Commerce Clause gives Congress power to legislate extraterritorially with respect to both gaming and commerce over the Internet, it should be concluded that Congress has the power to regulate Internet gaming.[58]

C. *Extraterritorial Application of Gaming Legislation*

{40} United States courts apply a two-part test to determine whether they have subject matter jurisdiction over acts occurring outside the United States. First, they ask whether there is a congressional intent that the

statute in question should apply extraterritorially. Second, they ask whether the effect of the proscribed conduct on the United States justifies the exercise of jurisdiction.

(i) Congressional Intent

{41} The reference in the Wire Act to prohibiting "communication in interstate or foreign commerce" suggests that Congress must have intended that courts have extraterritorial jurisdiction to enforce it. This view is supported by the decision of the court in *Vacco v. World Interactive Gaming*.[59] In that case, the court held that its jurisdiction under the Wire Act "clearly extends to the transmission of betting information to a foreign country."[60]

{42} In contrast to the Wire Act, the IGPA, in its current form, makes no reference to its possible jurisdictional reach. Notably, earlier versions of the IGPA expressly stated that "[i]t is the sense of the Senate that the Federal Government should have extraterritorial jurisdiction over" Internet gaming.[61] This provision was removed in response to Department of Justice concerns over extraterritorial enforcement.[62] In the absence of an express statement as to legislative intent, the court will attempt to impute an intention to Congress and will regard "the purpose of Congress as evinced by the description and nature of the crime." [63]

{42} The inherently cross-jurisdictional nature of the Internet suggests that Congress must intend the IGPA to apply to gambling activity occurring in places outside the United States. Arguably, the ease of operating websites from locations that are far removed from the website's intended audience means that the IGPA would be virtually meaningless unless there was some potential for it to apply extraterritorially. This issue was acknowledged by the court in *Vacco*. That court asserted that not having extraterritorial jurisdiction in relation to a breach of the Wire Act occurring outside the United States would "severely undermine [New York's] deep-rooted policy against unauthorized gambling, it also would immunize from liability anyone who engages in any activity over the Internet which is otherwise illegal."[64]

{43} It is arguable that the removal of an express reference to extraterritorial operation from the IGPA suggests that Congress did not intend that the IGPA would apply extraterritorially. However, the policy reasons discussed above, which suggest that the IGPA should apply extraterritorially, outweigh any argument supporting a Congressional intent that the operation of the Act be restricted to the United States.

(ii) Effects Test

{44} The second prong of the test of whether a court will have subject matter jurisdiction is the effect of the proscribed conduct on the United States. The court in *United States v. Aluminum Company of America* established that United States courts could exercise jurisdiction over proscribed conduct that results in a demonstrated, actual or presumed effect in the United States.[65]

{45} There are a number of bases on which it is arguable that offshore Internet gaming has an effect on the United States that is sufficient to justify the exercise of extraterritorial jurisdiction. First, Internet gaming has the potential to exacerbate social problems associated with gambling. This aspect of Internet gaming has been the source of much rhetorical excess among anti-gaming advocates. Senator Jon Kyl (R-AZ), for example, classifies Internet gaming as the "crack-cocaine of gambling."[66] Similarly, Keller describes "awestruck teenage techno-junkies or their gambling-addicted parents pounding the keyboard at unpoliced Internet gambling sites twenty-four hours a day."[67]

{46} Despite the rhetorical excess, there is no doubt that increased access to Internet gambling may increase participation in and addiction to gambling and the consequential economic and emotional harm that can stem

from gambling. The costs associated with remedying this harm will be borne, to some extent, by federal and state governments.

{47} Secondly, online gaming hurts traditional brick-and-mortar gaming businesses. Traditional gaming is a significant business in some states. A 1996 estimate indicated that $482 billion is spent annually on legalized gambling in the United States.[68] One analyst indicated that Americans spent 1.2 billion on online gambling in 1999 and that figure will grow to 3 billion in the year 2001.[69] To the extent that online gaming threatens the viability of a significant industry that employs large numbers of Americans and generates considerable profits, such gaming has a significant effect in the United States.

{48} A third, related effect of online gaming is its potential to undermine the tax revenue base of the States. Forty-eight states and the District of Columbia permit some form of legalized gambling.[70] In *People v. Kim*, in which the court was asked to consider whether a purchasing service for out-of-state lottery tickets violates New York anti-gaming laws, the court noted that the New York State lottery "has become a fund-raising device of real importance to the state."[71] The same is likely to be true in many states. As people move from traditional to online gaming, there is likely to be a decrease in taxation revenue generated by gaming unless technology or regulation makes online tax collection possible.

{49} For the above reasons, there is a strong argument that the effect of offshore Internet gaming is sufficiently significant to justify its extraterritorial regulation.

(iii) Legality in Another Country

{50} A separate, but related, matter that is relevant to the assertion of subject matter jurisdiction in respect to Internet gaming laws is that the legality of the activity in another country is irrelevant to a U.S. court's jurisdiction over that activity. Internet gaming businesses appear to operate under the misapprehension that legality in one country will act as a shield against prosecution under the laws of another. Cohen's attorney, for example, argued that because "[i]t is no crime in Antigua to accept a bet," Cohen could not be found guilty of breaching the Wire Act.[72]

{51} The argument that legality in a country provides a defense to a breach of United States gaming laws was soundly rejected by the court in *Vacco v. World Interactive Gaming*.[73] The court found nothing in the record or the law to support [World Interactive Gaming Corporation's] contentions that federal statutes cannot apply to an Internet casino licensed by a foreign government.[74] Schwarz, reviewing the relevant gaming legislation, reached a similar view, asserting that "Congress has clearly chosen to exclude extraterritorial gambling from breaching our borders, and no foreign governmental licensing agency can, or should, alter that."[75]

{52} Accordingly, even if the gaming activity is deemed to occur outside the United States, in relation to both the Wire Act and the IGPA, the test of legislative intent and the effects test are likely to be satisfied. A court will, therefore, be justified in asserting extraterritorial jurisdiction. Furthermore, legality in another country will not provide a valid argument against the exercise of that jurisdiction.

IV. PERSONAL JURISDICTION

{53} In addition to establishing subject matter jurisdiction, a United States court will have to determine whether it has personal jurisdiction over the operators of an offshore Internet casino.[76] Personal jurisdiction refers to the court's capacity to exercise authority over a defendant. For example, a United States court will engage in a specific analysis to determine if it has personal jurisdiction over an Australian operator of an Internet casino licensed in Australia. Under this analysis, the court must be satisfied that this exercise of

personal jurisdiction not only complies with the relevant state's "long-arm" statute, but also satisfies the requirements of the Due Process Clause of the Fourteenth Amendment.[77] The law of personal jurisdiction in Internet-related matters, however, remains in a state of flux and development. This section of the paper will address the application of state long-arm statutes and the Due Process Clause to Internet gaming as well as review the case law relating to the issue of personal jurisdiction in the context of Internet gaming.

A. *Long-Arm Statutes*

{54} The long-arm statutes of each state set out the jurisdictional limits imposed on that state's courts. Because the terms of the long-arm statutes of each state vary, the first requirement will not be considered in detail in this paper. The requirement for some minimum contact between the business and the forum state is significant, however, because it will apply to both state and, in most cases, federal actions.[78] The requirement for courts to comply with long-arm statutes is unlikely to severely limit the capacity of United States regulators to prosecute Australian Internet casinos. Many state long-arm statutes apply very broadly and allow courts to exercise jurisdiction to the full extent allowed by the Due Process Clause.[79]

{55} Because Internet casinos are likely to transact indiscriminately with people located in the United States, these casinos could be made a party to an action brought in a number of concurrent jurisdictions.[80] As a result, prosecutors are likely to choose a jurisdiction with a favorable long-arm statute. Because these prosecutions are often brought as a result of regulators posing as gamblers, those regulators may choose to operate from states with favorable long-arm statutes. Accordingly, "forum shopping" by regulatory agencies is likely to occur.

1. Due Process

{56} In *International Shoe Co v. Washington*,[81] the Supreme Court established the modern rule for compliance with the Due Process Clause of the Fourteenth Amendment by enunciating "the minimum contacts test."[82] The Court stated that "due process requires only that . . . if [the defendant] be not present within the territory of the forum, he must have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[83]

{57} In subsequent cases, the Court has expanded upon the minimum contacts test. In *World-Wide Volkswagen v. Woodson*,[84] the Court found that a corporate defendant must "purposefully avail itself" of the privileges and benefits of the forum state so that the defendant will have notice that it may be sued in that forum.[85] A further qualification to the test was made by the Court in *Burger King v. Rudzewicz*.[86] In that case, the Court asserted that the exercise of jurisdiction must be fair and reasonable.[87] The Court listed a number of factors which may be relevant to the fairness and reasonableness of the exercise of jurisdiction and stated that "[o]nce it has been decided that a defendant purposefully established minimum contacts with the forum State, these contacts may be considered in light of [those] factors."[88] Accordingly, fairness and reasonableness will not be decisive factors, but may affect whether or not the defendant's contacts are sufficient for the court to exercise personal jurisdiction.

{58} The most useful analytical framework in considering the application of traditional jurisdictional principles to the Internet is provided by the District Court of Pennsylvania in *Zippo Manufacturing v. Zippo Dot Com*.[89] In that case, Zippo Manufacturing, a Pennsylvanian corporation, attempted to sue Zippo Dot Com, a Californian corporation that operated a website called "Zippo Dot Com," for breach of trademark under Pennsylvania law.[90] Zippo Dot Com's only contacts with Pennsylvania were through the website, but the court held that it had personal jurisdiction.[91] In making this finding, the court stated that the likelihood that personal jurisdiction can be exercised "is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the Internet."[92] The court then reviewed relevant

precedent, concluding that the ability of a court to gain personal jurisdiction over an entity solely based on Internet presence can be determined by dividing the entity's use of the Internet into three categories. The first category comprised "situations where a defendant clearly does business over the Internet."[93] For example, websites through which people enter into contracts or transmit files fall into this category. The second category included passive websites which only provide information and do not allow any interaction between the site and its users.[94] Falling between these two categories is a third category in which users can exchange information with the website. When websites fall into the third category, the court concluded that "the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site."[95] Thus, *Zippo* established a "'spectrum' consisting of two polar opposites and a broad middle ground."[96] The analytical framework identified in *Zippo* has been relied on heavily in the few cases that have considered Internet gaming.

V. THE INTERNET GAMING CASES

{59} Courts have considered the issue of personal jurisdiction in relation to website operators running Internet gaming businesses on a number of occasions. Those decisions suggest that courts are likely to determine that they have personal jurisdiction over an offshore Internet casino that transacts with United States residents. Considering the three part test in *Zippo*, this result should not be surprising. The nature of Internet gaming involves frequent contacts and high levels of interactivity and commercial transacting between the players and the site. Accordingly, Internet casinos are likely to fall into the category of websites "where a defendant clearly does business."[97]

{60} The decision of the court in *Humphrey v. Granite Gate Resorts, Inc*. is significant because it is one of the few decisions in which jurisdiction has been found based on a passive website.[98] In that case, the Minnesota Attorney General sued Granite Gate Resorts, a Nevada corporation, for "deceptive trade practices, false advertising, and consumer fraud."[99] The court in *Granite Gate Resorts* acknowledged that the case was the "first in which a Minnesota court [had] addressed the issue of personal jurisdiction based on Internet advertising,"[100] but expressed its belief that "established legal principles provide adequate guidance."[101]

{61} Granite Gate provided Internet advertising services, which included advertising an online wagering service called WagerNet. The WagerNet site, which had not commenced operations at the time the action was brought, had been designed by Granite Gate's president, Kerry Rogers. The site stated that WagerNet was owned by a company based in Belize and that it provided people with a legal way to bet on sporting events from anywhere in the world.[102]

{62} The WagerNet site invited people to put themselves on a mailing list to receive more information about the service. It gave a toll-free telephone number and a Nevada telephone number to call for more information. Users of the page were advised to consult with local authorities regarding restrictions on offshore sports betting by telephone before registering with WagerNet and the terms and conditions stated that any claims against WagerNet could only be brought in Belize.[103]

{63} The court relied on a number of factors to justify the exercise of personal jurisdiction. First, it found that during a two-week period, at least 248 Minnesota computers accessed Granite Gate's website, and that at least one Minnesota resident was on Granite Gate's mailing list. Second, it found that the quality of Granite Gate's contacts with Minnesota were significant. In so finding, the court relied on a number of decisions, including *Maritz, Inc. v. Cybergold, Inc*.[104] and *Playboy Enterprises v. Chuckleberry Publishing*[105] to support the view that advertising on the Internet is not a passive activity. The court found that "[a]dvertising in the forum state, or establishing channels for providing regular advice to customers in the forum state, indicates a defendant's intent to serve the market in that state."[106] In support of this conclusion, the court pointed out that Granite Gate had chosen to use English on the website and had provided a United States toll-free

number. Both of these factors pointed to an intention to target the United States market, including Minnesota. Thus, the court found that the advertisements should have put Granite Gate on notice that it may be sued in Minnesota, and thus, that the purposeful availment test was satisfied.[107]

{64} The decision in *Granite Gate Resorts* has been criticized as setting too low a threshold on the contacts necessary to support the exercise of personal jurisdiction. For example, Felix Pelzer, writing in the *South Carolina Law Review*, notes that the rule promulgated in *Granite Gate Resorts* allows for an interpretation "that would virtually destroy the traditional requirements for a court's exercise of jurisdiction over a defendant."[108] It is significant that this extreme interpretation of the law occurred in the context of a consideration of Internet gaming. In reaching its decision, the court pointed to Minnesota's interest in regulating gambling as supporting "the exercise of jurisdiction over a nonresident defendant when viewed in light of the . . . factors for evaluating whether minimum contacts exist."[109] The decision, therefore, suggests that policy reasons relating to regulation of gaming may encourage courts to assert jurisdiction over Internet gaming operators in situations where they may not otherwise do so.

{65} Another interesting point to arise from the decision in *Granite Gate Resorts* is that the court disregarded the disclaimer on the WagerNet website. For an Australian Internet casino hoping to limit its exposure to prosecution under United States gaming laws, the court's approach is significant. The court found that, although the disclaimer may be relevant to the consumer fraud action brought against Granite Gate, Granite Gate's "clear effort to reach and seek potential profit from Minnesota consumers provides minimum contacts of a nature and quality sufficient to support a threshold finding of personal jurisdiction."[110] The court's decision suggests that a disclaimer will not provide a shield to liability if other elements of the relevant website satisfy the purposeful availment test.

{66} In *Thompson v. Handa-Lopez*, the Texas District Court also considered the application of traditional personal jurisdiction rules to Internet gaming operators.[111] In that case Thompson, a resident of Texas, brought an action in Texas to recover winnings from Handa-Lopez Inc., a California corporation that operated an Internet casino called "Funscape's Casino Royale."[112] Players on the Funscape site purchased game tokens with their credit cards and played casino games using those tokens.[113] The tokens could be redeemed for either prizes or money.[114] The court noted that "[b]uried within the contract was an inconspicuous provision which provided that any disputes . . . shall be governed by the laws of the State of California . . . and shall be resolved exclusively by final and binding arbitration in the City of San Jose, County of Santa Clara, State of California, USA."[115]

{67} Handa-Lopez sought, among other things, a motion to dismiss the action before the Texas court for lack of personal jurisdiction.[116] In considering Handa-Lopez's motion to dismiss, the court restated the traditional jurisdictional principles relating to due process and affirmed the three-category test in *Zippo*.[117] Relying on the decisions in *Maritz*[118] and *Inset Systems, Inc. v. Instruction Set, Inc.*,[119] the court held that Handa-Lopez made sufficient minimum contacts with players on the Funscape site to satisfy the Due Process Clause.[120]

{68} The court noted that the Funscape site's presence on the Internet meant that it had directed the advertising of its casino to all states.[121] The court was persuaded by the reasoning in *Inset* that the Internet is designed to communicate with thousands of people and that advertisements on it represent a stronger "contact" with the forum state than traditional advertisements because they "are available continually to any Internet user."[122] In contrast to *Granite Gate Resorts*, however, the court, in support of its exercise of jurisdiction, was also able to rely on the fact that Handa-Lopez "indiscriminately responded to every user" [123] and "continuously interacted with casino players, entering into contracts with them as they played the various games."[124] Accordingly, the court was able to identify advertising to Internet users and continuous and indiscriminate contracting and communication with players as giving rise to the minimum contacts

necessary to establish proper exercise of personal jurisdiction.

{69} The court's reasoning is similar to the reasoning in *Granite Gate Resorts* in two significant aspects. First, the court was persuaded by Texas's "strong interest in protecting its citizens by adjudicating disputes involving the alleged breach of contract, fraud, and violations of the Texas Deceptive Trade Practices Act by an Internet casino on Texas residents."[125] Second, the court found that the clause purporting to be a forum selection clause did not prevent the filing of a lawsuit outside California and, even if it did, that Thompson was not given proper notice of the clause.[126] Again, the fact that the subject matter of the action involved gaming was considered a relevant factor in exercising jurisdiction and the forum selection clause did not provide grounds upon which to dismiss for lack of jurisdiction.

{70} The most recent case to consider the issue of personal jurisdiction over Internet gaming operators is *Vacco v. World Interactive Gaming*.[127] The central issue addressed by the court was whether the State of New York could enjoin a foreign corporation that was legally licensed to operate an offshore casino from offering gambling to Internet users in New York.[128] World Interactive Gaming Corporation was a Delaware corporation. Its wholly owned subsidiary, Golden Chips Casino Inc., was an Antiguan corporation that had acquired a license from the government of Antigua to operate an Internet casino.[129] World Interactive Gaming sought to have the petition for injunctive relief dismissed on the ground that, among other things, the court lacked jurisdiction over either World Interactive Gaming or Golden Chips Casino.

{71} The court found that Golden Chips Casino promoted its Internet gaming operation on its website, on the Internet, and in a national gambling magazine.[130] The court also considered the way in which the casino operated. In this respect, it found that users of Golden Chips Casino were required to wire money to a bank account in Antigua and to download additional software from Golden Chips Casino's website.[131] In order to do so, users were required to submit a permanent address.[132] Significantly, if an address in a state that did not permit gambling, such as New York, was entered, the user was denied access to the site's gambling facilities.[133]

{72} As with both *Granite Gate Resorts* and *Handa-Lopez*, the court commenced its discussion of the personal jurisdiction issues by reasserting the relevance of traditional jurisdictional issues.[134] In regard to World Interactive Gaming's contacts with New York, the court found that World Interactive Gaming was "clearly doing business in New York for purposes of acquiring personal jurisdiction."[135] In reaching this conclusion, the court relied on, among other things, the fact that World Interactive Gaming operated its business from its corporate headquarters in Bohemia, New York, worked with a New York graphics company to design the website and received telephone calls from New Yorkers through its New York headquarters.[136] Again, the court also found it significant that World Interactive Gaming had engaged in an indiscriminate advertising campaign all over America with the knowledge that their ads were reaching New Yorkers.[137]

{73} Having established that the exercise of personal jurisdiction over the Delaware corporation was justified, the court then considered whether it could exercise jurisdiction over World Interactive Gaming's Antiguan subsidiary, Golden Chips Casino.[138] The relevant test to be applied to determine whether to pierce the corporate veil in this case was whether Golden Chips Casino "was so controlled by [World Interactive Gaming] as to be a mere agent, department or alter ego" of World Interactive Gaming.[139] Reviewing the relevant factual circumstances, the court answered the question in the affirmative and found that exercise of personal jurisdiction over Golden Chips Casino was justified. [140]

{74} To the extent that the exercise of personal jurisdiction was only required to be justified with reference to Golden Chips Casino's relationship with its parent company, this case does not represent a true exercise of anti-gaming laws to a foreign entity operating an Internet casino. However, the case does provide a further

example of the fact that the activities normally carried on by Internet casinos will be sufficient to give rise to the exercise of personal jurisdiction over those casinos.

{75} Another significant element of the case is that the court dismissed Golden Chips Casino's attempt to prevent users from jurisdictions in which it was illegal to gamble from accessing the site. The court accepted evidence that "because the software does not verify the user's actual location, a user initially denied access, could easily circumvent the denial by changing the state entered to that of Nevada, while remaining physically in the State of New York."[141] No consideration was given to technical limits on the capacity of the software to accurately ascertain the actual location of the user or the capacity of a user to circumvent such attempts. The court did pose the question of whether Golden Chips Casino's exclusion of users with addresses in certain jurisdictions "constitutes a good faith effort not to engage in gambling in New York" but made no attempt to answer that question or to indicate what might constitute such a good faith attempt.[142] This aspect of the case should raise significant concerns for licensed Australian Internet casinos which legitimately attempt to exclude users in jurisdictions that do not permit gambling from accessing their sites. Such attempts should be relevant to the issue of whether an entity has purposefully availed itself of the privilege of doing business in a jurisdiction such that it could expect to be amenable to the courts of that jurisdiction.

{76} As already noted, United States courts may not consider disclaimers relating to the legality of gaming in each user's jurisdiction to be persuasive in determining whether to exercise personal jurisdiction. In view of *Vacco v. World Interactive Gaming*, it appears that imposing technical limitations on access may also not be sufficient to prevent a court from exercising personal jurisdiction. It is unclear, therefore, what steps an Internet casino will be required to take to prevent itself from being amenable to the jurisdiction of a United States court. At some point, however, attempts to exclude users in a particular jurisdiction must demonstrate that an Internet casino has not availed itself of that jurisdiction.

VI. ENFORCEMENT

{77} With regard to the way courts have applied traditional jurisdictional principles to the Internet, and, in particular, to cases involving Internet gaming, it can be concluded that United States courts are likely to have the subject matter and personal jurisdiction necessary to hear actions against operators of offshore Internet casinos. Accordingly, those operators will be amenable to prosecution for breach of United States anti-Internet gaming laws such as the Wire Act and, perhaps in the future, the IGPA.

{78} Moreover, United States regulatory bodies have evinced a willingness to pursue convictions and a commitment to minimizing the effects of offshore Internet gaming on the U.S. Cohen was only one of twenty-two operators of offshore Internet gaming operations against whom the U.S. Attorney from the Southern District of New York filed a criminal complaint.[143] Furthermore, former U.S. Attorney General, Janet Reno, has expressed the official view that "[y]ou can't hide online, and you can't hide offshore."[144]

{79} Significantly, however, regulatory efforts to date have focused on U.S. citizens operating offshore. For example, Australian operators of licensed Australian Internet casinos can take some comfort from the fact that United States gaming regulators are unlikely to be able to enforce judgements against them. Unless an Australian operator of a licensed Australian Internet casino voluntarily submits to the jurisdiction of the United States, enforcement of anti-Internet gaming legislation against that operator would require the Australian Government's cooperation in extraditing that operator. Extradition could be sought on two bases. First, this could be done under *The Treaty on Extradition between Australia and the United States of America*, [145] which, pursuant to the *Extradition (United States of America) Regulations* (Cth), is enforceable in Australia under the *Extradition Act 1988* (Cth). Second, the United States could attempt to employ the doctrine of "comity" which refers to "diplomatic niceties performed by countries out of a sense of international etiquette rather than binding obligation."[146]

{80} Any attempt to affect extradition of the operator of a licensed Australian Internet casino is likely to fail because of the principle of "double criminality." Double criminality refers to the requirement that the crime in respect to which extradition is sought is a crime in both countries. In relation to extradition pursuant to a treaty, the double criminality requirement is expressly stated in the *Extradition Act 1988* (Cth).[147] In relation to extradition under the doctrine of "comity," it is difficult to imagine the Australian Government agreeing to extradite a person for conducting an activity expressly licensed by it. Accordingly, extradition is not a realistic enforcement option for United States regulators attempting to prosecute operators of licensed Australian Internet casinos.

{81} Nevertheless, unenforceability does not prevent United States regulators from issuing warrants for the arrest of offending operators. In a real sense, such a warrant makes that person a fugitive from the law and prevents him from traveling to the United States. In countries such as Australia where holders of Internet gaming licenses are required to pass police checks to ascertain that they are "of good character," the issue of a warrant may affect their continued ability to hold a license. The simple power to issue warrants should, therefore, be cause for some trepidation among operators of licensed offshore Internet casinos. Further, to the extent that any operator of an offshore Internet casino has assets within the United States, those assets may be liable to seizure.

{82} In addition, United States' regulators may be able to employ a range of indirect enforcement measures against offshore Internet casinos. The capacity for regulators to prosecute gamblers rather than gambling businesses or to prevent United States Internet Service Providers or financial institutions from facilitating the activities of an Internet gambling service may inflict significant financial harm on an Internet gaming business.[148]

VII. CONCLUSION

{83} The operation of a licensed offshore Internet casino that transacts with U.S. residents is likely to contravene U.S. anti-gaming laws. In particular, it is likely to contravene the Wire Act and, if enacted, the IGPA. U.S. courts are likely to be able to exercise jurisdiction over operators of Internet casinos licensed under the laws of another country for those contraventions. Although U.S. regulators have expressed and demonstrated a willingness and a commitment to prosecuting operators of offshore Internet casinos, they are unlikely to be able to enforce judgements against offshore operators unless those operators voluntarily submit to the jurisdiction of United States courts. For example, as Internet gaming is legal in Australia and is conducted under government licenses, Australia is unlikely to agree to extradite operators of licensed Internet casinos to the United States. However, regulators have the capacity to issue warrants against and, in some circumstances, to seize the assets of operators of licensed offshore Internet casinos, as well as to employ indirect means of enforcement. Accordingly, an offshore Internet gaming license provides Internet casinos and their operators with no guarantee of immunity from United States gaming regulators.

ENDNOTES

[*] Adrian Goss is a lawyer at Holding Redlich, Lawyers and Consultants in Melbourne, Australia. The author wishes to thank Dr. Dan Hunter of the Wharton School, University of Pennsylvania for his advice and encouragement in relation to the preparation of this paper.

[1] 18 U.S.C.S. § 1084 (1994 & Supp. 2000).

[2] *See, e.g., Landmark Conviction in Web Gambling*, AP NEWSBRIEFS, Feb. 28, 2000, *available at* 2000 WL 15784143; Chris Jenkins, *Web Gambling Cases Could Be Far Reaching,* USA TODAY, Feb. 22, 2000, at 8C, *available at* 2000 WL 5769972.

[3] *See, e.g.,* Scheherazade Daneshkhu et al., *Online Betting Operator Jailed*, FINANCIAL TIMES (London), Aug. 11, 2000, at 8.

[4] Jenkins, *supra* note 2.

[5] David Higgins, *Betting Law Applied to Antigua Operation*, SYDNEY MORNING HERALD, Mar. 1, 2000, *available at* 2000 WL 14583637.

[6] Senate Select Committee on Information Technologies: Online gambling in Australia: Discussion, Oct. 1, 1999, *available at* http://www.aph.gov.au/senate.

[7] Unless stated otherwise, this paper will use the term"casino" to refer to all forms of Internet gaming, including sports betting, lotteries, and other games of chance in which money is risked for financial gain. Similarly, the words"betting", "gambling", and "wagering" will be used interchangeably.

[8] 18 U.S.C. § 1084 (1994).

[9] S. 692, 106th Cong. § 1085 (1999) (hereinafter IGPA).

[10] Senate Select Committee on Information Technologies, *supra* note 6, at 21.

[11] Draft Regulatory Control Model for New Forms of Interactive Home Gambling, (proposed May 23, 1997), http://www.qogr.qld.gov.au/inthogam.html.

[12] *Mark Blandford's Got a Couple of Bets Going at the Same Time. Like . . .*, RED HERRING, Apr. 1, 2000, *available at* 2000 WL 22831152.

[13] Simon Johansson, *Online Casino Threatens to Move Offshore*, THE AGE ONLINE, Sept. 22, 2000, http://www.theage.com.au/c...rsion.pl?story=20000922/A12515-2000Sep22 (last visited Mar. 19, 2000).

[14] AUSTL . CONST . ch. I, pt. V, § 51(v).

[15] Interactive Gambling (Moratorium) Bill 2000: Explanatory Memorandum, Commonwealth of Austl. Senate (circulated by Senator Richard Alston, Minister for Communications, Information Technology and the Arts), *available at* http://www.aph.gov.au/senate.

[16] *See, e.g., CBT*, AAP NEWSFEED, Jan. 10, 2001 (reporting that Canbet reported a 427% increase in turnover comparing Dec. 1999 to Dec. 2000).

[17] Joseph M. Kelly, *Internet Gambling Law*, 26 WM. MITCHELL L. REV. 117, 142 (2000).

[18] Yee Fen Lim, *Internet Gambling US Perspective*, 1 INTERNET L. BULL. 114 (1998).

[19] 18 U.S.C.S. § 1953 (1991 & Supp. 2000).

[20] 28 U.S.C.S. § 3702 (1994 & Supp. 2000).

[21] 18 U.S.C.S. § 1952 (1991 & Supp. 2000).

[22] 18 U.S.C. § 1084 (1994).

[23] 18 U.S.C. § 1081 (1994).

[24] Anthony N. Cabot, *Internet Gambling in the Information Age*, NEV. LAW., Mar. 1999, at 21-22.

[25] *The Internet Gambling Prohibition Act of 1999*: *Hearing on H.R. 3125*, 106th Cong. (2000) (statement of the Hon. Kevin V. Di Gregory).

[26] Scott L. Olson, *Betting No End to Internet Gambling*, 4 J. TECH. L. & POL'Y 2, 18 (1999).

[27] Bruce P. Keller, *The Game's the Same*, 108 YALE L.J. 1569, 1583 (1999).

[28] Anthony N. Cabot, *The Gaming Industry: Current Legal, Regulatory and Social Issues*, A.L.I.-A.B.A. Course of Study Materials, Course No. SE81, at 189 (Mar. 16, 2000).

[29] *See* Keller, *supra* note 27, at 1583.

[30] *See* Di Gregory, *supra* note 25.

[31] *See* Cabot, *supra* note 28, at 188.

[32] *See id*.

[33] *See* Keller, *supra* note 27, at 1583.

[34] Tom Mainelli, *Online Gambling: Luck Runs Out for Virtual Casinos?*, PC WORLD , Oct., 2000, *available at* http://www.pcworld.com/news/article/0,aid,18091,00.asp.

[35] Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. § 2(b)(1) (1999).

[36] *See id*. § 2(b)(2).

[37] *See id*. § 2(c).

[38] *See id*. § 2(b)(1).

[39] *See id*. § 2(d)(1).

[40] Lee Davidson, *Cannon Full of Surprises on Net Gambling*, DESERT NEWS, Oct. 4, 2000, at A15.

[41] *See* Di Gregory, *supra* note 25.

[42] Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guince, 456 U.S. 694, 701 (1982).

[43] For a discussion of cyberspace jurisdiction relating to intellectual property rights, see JAMES FAWCETT & PAUL TORREMANS, INTELLECTUAL PROPERTY AND PRIVATE INTERNATIONAL LAW 160-161 (1998).

[44] *See id*.

[45] Jack L. Goldsmith, *Against Cyberanarchy*, 65 U. CHI. L. REV. 1199, 1200 (1998); *cf*. David Johnson & David Post, *Law and Borders*, 48 STAN. L. REV. 1367 (1996) (arguing that cyberspace transmissions operate independent of physical boundaries, and, therefore, should be treated differently from "real-world" transactions).

[46] 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999).

[47] *Id*. at 850.

[48] *Id*.

[49] Justin Ware, *Trouble in Paradise*, YAHOO! INTERNET LIFE FROM ZD WIRE, Oct. 29, 1999, 1999 WL 14789099 (quoting then-U.S. Atty. General Janet Reno).

[50] 152 F.3d 443 (5th Cir. 1998).

[51] *Id*. at 448.

[52] *See* Kelly, *supra* note 17, at 152.

[53] *See U.S. v. Aluminum Co. of Am*. cited *infra* note 65.

[54] *See* Church v. Hubbart, 6 U.S. 187, 234 (1804); EEOC v. Arabian American Oil, 499 U.S. 244, 246, 248 (1991).

[55] U.S. CONST. art. 1, § 8, cl. 3.

[56] 188 U.S. 321 (1903).

[57] 509 U.S. 418 (1993) (arguing that any restraint imposed on commercial speech is outweighed by governmental interest in the regulation of gambling, thus giving government broad authority to restrain communications that facilitate gambling).

[58] *See* Keller, *supra* note 27, at 1587.

[59] 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999).

[60] *Id*. at 860.

[61] Internet Gambling Prohibition Act of 1997, S. 474, 105th Cong. (1997).

[62] *See* Kelly, *supra* note 17, at 141.

[63] United States v. Bowman, 260 U.S. 94, 97-98 (1922).

[64] *Vacco*, 714 N.Y.S.2d at 860.

[65] United States v. Aluminum Co. of Am., 148 F.2d 416, 443-444 (2d Cir. 1945).

[66] Wayne Coffey, *AN OFFSHORE THING: Antigua is Home for Internet Sports Betting, Where Dollars Come in Faster than a Mouse Click*, N.Y. DAILY NEWS, Mar. 26, 2000, at 102, *available at* 2000 WL 15915659.

[67] Keller, *supra* note 27, at 1592.

[68] Richard Raysman & Peter Brown, *Cybercasinos: Gambling Meets the Internet*, *at* http://www.brownraysman.com/publications/techlaw/cllj897.html, at ¶1 (last visited Mar. 15, 2001).

[69] *See* Coffey, *supra* note 66.

[70] Raysman, *supra* note 68, at ¶ 5.

[71] New York v. Kim, 585 N.Y.S.2d 310, 313 (N.Y. Crim. Ct., 1992).

[72] Stephen Williams, *Old Federal Law Hits New Technology*, NEWSDAY, Feb. 28, 2000, at A27.

[73] 714 N.Y.S.2d 844, at 850.

[74] *Id*. at 851.

[75] Joel Michael Schwarz, *The Internet Gambling Fallacy Craps Out*, 14 BERKELEY TECH. L. J. 1021, 1043 (1999).

[76] *Id*. at 1041.

[77] *Id*. at 1039, 1041.

[78] In relation to the latter, and for a more detailed consideration, see John Rothchild & Gregory M. Silverman, *Cases and Materials on the Law of Electronic Commerce* (1999) (unpublished draft version included in material prepared June15, 2000 for 'Electronic Commerce Law' subject taught at The University of Melbourne).

[79] *See* Schwarz, *supra* note 75, at 1042 (arguing that jurisdiction can be asserted by the state where the transaction occurs, where significant effects of the transaction are felt, and the jurisdiction where the regulated parties exist).

[80] *See* Goldsmith, *supra* note 45, at 1200.

[81] 326 U.S. 310 (1945).

[82] *Id*. at 316.

[83] *Id*. (quoting Miliken v. Meyer, 311 U.S. 457, 463 (1940)).

[84] 444 U.S. 286 (1980).

[85] *Id*. at 297; *see also* Hanson v. Denckla, 357 U.S. 235, 263 (1958).

[86] 471 U.S. 462 (1985).

[87] *See id*. at 476. The Court states that a defendant who has "availed himself of the privilege of conducting business" in the forum state, then requiring the defendant to litigate in that forum is "presumptively not unreasonable." *Id*.

[88] *Id*.

[89] 952 F.Supp. 1119 (W.D. Pa. 1997).

[90] *Id*. at 1121.

[91] *Id*. at 1121, 1124.

[92] *Id*. at 1124.

[93] *Id*.

[94] *See id*.

[95] *Id*.

[96] Rothchild & Silverman, *supra* note 78, at ¶ 9.

[97] Zippo Mfg. v. Zippo Dot Com, 952 F. Supp. 1119, 1124 (W.D.Pa. 1997).

[98] 568 N.W.2d 715 (1997).

[99] *Id*. at 717.

[100] *Id*. at 718.

[101] *Id*.

[102] *Id*. at 717.

[103] *Id*.

[104] 947 F. Supp 1328, 1333 (E.D.Mo. 1996).

[105] 939 F. Supp. 1032, 1044 (S.D.N.Y. 1996).

[106] *Granite Gate Resorts,* 568 N.W.2d at 719.

[107] *Id*. at 720.

[108] Felix C. Pelzer, *Unchartered Territory: Personal Jurisdiction in the Information Age*, 51 S.C. L. REV. 745, 753 (2000).

[109] *Granite Gate Resorts,* 568 N.W.2d at 721.

[110] *See id* at 720.

[111] Thompson v. Handa-Lopez, Inc., 998 F. Supp. 738 (W.D. Tex., 1998).

[112] *Id*. at 741.

[113] *See id*.

[114] *See id*.

[115] *Id*.

[116] *Id*.

[117] *See id*. at 742-43.

[118] Maritz, Inc. v. Cybergold, Inc., 947 F. Supp. 1328, 1333-1334 (E.D. Mo. 1996).

[119] 937 F. Supp. 161, 164-165 (D. Conn. 1996).

[120] *Handa-Lopez*, 998 F. Supp. at 743-44.

[121] *Id*. at 743.

[122] *Id*. (citing *Inset Systems*, 937 F. Supp at 163).

[123] *Id*. at 743-44 (quoting *Maritz,* 947 F. Supp. at 1333-1334).

[124] *Id*. at 744.

[125] *Id*. at 745.

[126] *Id*. at 745-46.

[127] 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999).

[128] *Id*.

[129] *See id*. at 846.

[130] *Id*. at 858.

[131] *Id*. at 855.

[132] *Id*.

[133] *Id*.

[134] *Id*. at 857 (citing *People v. Lipsitz*, 663 N.Y.S.2d 468, 475 (1997).

[135] *Id*.

[136] *See id*. at 858.

[137] *See id*.

[138] *See id*. at 858-59.

[139] *Id*. at 858.

[140] *Id*. at 859.

[141] *Id*. at 855.

[142] *Id*.

[143] *See* Kelly, *supra* note 17, at 150.

[144] Ware, *supra* note 49.

[145] Treaty on Extradition , May 14, 1974, U.S.-Austl., 27 U.S.T. 957 (entered into force May 8, 1976), *amended by* Protocol Amending the Treaty on Extradition Between the United States of America and Australia, September 4, 1990.

[146] John T. Fojut, *Ace in the Hole*, 8 DEPAUL-LCA J. ART & ENT. L. & POL'Y 155, 170 (1997) (quoting Brian Pearce, *The Comity Doctrine as a Barrier to Judicial Jurisdiction,* 30 STAN. J. INT'L. L. 525, 527 (1994)).

[147] Extradition Act, 1988, § 19(2)(c) (Austl.).

[148] *See generally* Schwarz, *supra* note 75, at 1050-68 (discussing indirect enforcement measures employed by U.S. regulators to prevent unauthorized online gambling).

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(9) http://www.venable.com/Internet/gaming.html GAMING ON THE INTERNET - This article by Melissa Landau Steinham discusses the status of gambling on the Web.

(10) http://seattletimes.nwsource.com/news/sports/html98/gamb_012499.html#background BORDERLESS BETTING: THE EMERGENCE OF ONLINE GAMBLING - Elliot Almond's article discusses how, even with the potential safeguards, confusion reigns over what can be done to stop or limit Internet gambling.

(11) http://www.zolatimes.com/v3.11/internet_gambling.htm INTERNET GAMBLING: POPULAR, INEXORABLE, AND (EVENTUALLY) ILLEGAL - This article, by Tom W. Bell, describes the powerful demand for Internet gambling, analyzes the forces arrayed against it, and argues against its prohibition.

(12) http://www.iworldinteractive.com/article/new_page_16.htm INTERNET LAWS - This article, by Kenneth Freeling, gives an overview of recent cases involving the court's treatment of Internet Gambling.

(13) http://www.virtualrecordings.com/wagering.htm WAGERING ON THE WEB - Robin Gross discusses how the future of online gambling, like many new legal issues raised by the Internet, such as privacy and jurisdiction, will likely take shape in the courts.

(14) http://www.pcworld.com/resource/article.asp?aid=18091 ONLINE GAMBLING: LUCK RUNS OUT FOR VIRTUAL CASINOS? - Tom Mainelli's article gives an excellent overview of positions taken by opponents and proponents of anti-gambling legislation.

(15) http://study.haifa.ac.il/~bbornfel/Casino/legal.html#56 LEGAL STATUS OF INTERNET GAMBLING - Article asserts how consumer demand for Internet gambling and the states' demand for tax revenue will create enormous political pressure for legalization.

(16) http://www.thestandard.net/article/display/0,1151,4387,00.html GABLING ONLINE? YOU BET! - This article explains when famous names and established companies get involved, opposition to Internet gambling is appearing to crumble. It includes a table titled Internet Gambling Worldwide, Past and Future which illustrates the increase in gambling online.

(17) http://asia.cnn.com/2001/WORLD/asiapcf/auspac/03/27/australia.gambling.law/ AUSTRALIA SEEKS TO BAN CYBER-GAMBLING - This CNN March 27, 2001 article explains how Australia's conservative government wants to prohibit Internet gambling.
