

Testimony of Timothy A. Kelly, Ph.D.
Executive Director
National Gambling Impact Study Commission

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Good morning Mr. Chairman and Members of the Committee. I am Tim Kelly, Executive Director of the National Gambling Impact Study Commission. I appreciate this opportunity to give testimony on Internet gambling and its effects as it relates to H.R.556 and other Internet gambling legislative proposals.

Only thirty years ago, gambling was illegal in most states and was generally considered to be a vice contrary to the American work ethic. Serious gamblers had to travel to Nevada for casino play, and the states had not yet plunged into lottery mania.

Today, however, there are over 800 casinos operating in 28 states, the lottery is played in 37 states plus the District of Columbia, and all but three states have legalized some form of gambling. Gambling expansion has swept the nation, with revenues jumping from about \$1 billion in 1980 to well over \$50 billion today. That means Americans lose on average over \$137 million dollars every day of the year from gambling.

Gambling expansion has come with a high social cost. 15.4 Million Americans already are suffering from problem and pathological gambling – also called gambling addiction, which is often devastating to the individual and their family. The National Academies of Science found that “pathological gamblers engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves.” It is not unusual for a gambling addict to end up in bankruptcy, with a broken family, facing a criminal charge from his or her employer.

Concerns about gambling’s rapid rise nationally through the ‘80s and early ‘90s and its impact on individuals and communities drew Congressional attention. In 1996 Congress created the National Gambling Impact Study Commission, charged with studying the economic and social effects of legalized gambling in America. In 1999 the Commission completed its unanimously-adopted final report, which can be found on the web at www.ngisc.gov. The report contains 77 far-reaching recommendations for state and federal legislators, and perhaps most importantly for this Subcommittee, calls for prohibition of Internet gambling not already authorized. This is especially noteworthy in light of the fact that four of the nine commissioners represented or endorsed the gambling industry.

The Commission’s report devoted an entire chapter to Internet gambling because, if unchecked, this may well become the most common form of gambling for Americans and their families in the years to come. At the click of a mouse, virtual casinos and lotteries

appear on computer screens in dorms and homes across America. All that is required to play is a credit card number, and time and money to burn.

I would like to walk you through four key sections of the report's chapter on Internet gambling that highlight concerns raised by this form of gambling. I will then conclude by discussing the Commission's recommendations as they apply to legislation under consideration by this Subcommittee.

Four Key Sections from the National Gambling Impact Study Commission's Chapter on Internet Gambling

A key mandate of the National Gambling Impact Study Commission was to assess the impact of technology on gambling in the United States. Technology in this area is evolving at a rapid rate, and its potential is only beginning to be glimpsed. This is especially true regarding Internet gambling. On-line wagering promises to revolutionize the way Americans gamble because it opens up the possibility of immediate, individual, 24-hour access to the full range of gambling in every home.

To better understand the impact of Internet gambling, the Commission and its Subcommittee on Regulation, Enforcement, and the Internet received testimony from technology experts, the interactive gambling community, and public officials and reviewed the growing research on Internet use and the efforts of regulators to match the unprecedented pace of change. This chapter presents a summary of those findings and recommendations for meeting the challenge posed by this technology.

I. Candidates for Prohibition

Youth Gambling

Because the Internet can be used anonymously, the danger exists that access to Internet gambling will be abused by underage gamblers. In most instances, a would-be gambler merely has to fill out a registration form in order to play. Most sites rely on the registrant to disclose his or her correct age and make little or no attempt to verify the accuracy of the information. Underage gamblers can use their parents' credit cards or even their own credit and debit cards to register and set up accounts for use at Internet gambling sites.

Concerns regarding underage gambling derive in part from this age group's familiarity with and frequent use of the Internet. *American Demographics* reports that 69 percent of 18- to 24-year-olds use computers for hobbies and entertainment, compared with 10 percent of people ages 65 and older. A 1997 study by the Survey of Public Participation in the Arts (SPPA) showed that 72 percent of people ages 18 to 24 use computers, averaging four hours of use daily. According to the American Internet User Survey, younger users communicate more often on-line and browse more Web sites than older Internet users do. Moreover, younger Internet users are most likely to download video clips and to access bank account information. Given their knowledge of computers and familiarity with the Web, young people may find gambling on the Internet particularly appealing.

Of particular concern is the special attraction of youth to on-line sports wagering, tournaments, and sweepstakes. The National Collegiate Athletic Association has voiced its concern over the problem of Internet sports gambling among college students. In testimony before the Senate Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information, Director of Agent and Gambling Activities Bill Saum stated that sports gambling "remains a growing problem on college campuses.... If left unchecked, the growth of Internet gambling may be fueled by college students. After all, who else has greater access to the Internet?"

Pathological Gamblers

Pathological gamblers are another group susceptible to problems with Internet gambling. In addition to their accessibility, the high-speed instant gratification of Internet games and the high level of privacy they offer may exacerbate problem and pathological gambling. Access to the Internet is easy and inexpensive and can be conducted in the privacy of one's own home. Shielded from public scrutiny, pathological gamblers can traverse dozens of Web sites and gamble 24 hours a day. Experts in the field of pathological gambling have expressed concern over the potential abuse of this technology by problem and pathological gamblers. The director of the Harvard Medical School's Division on Addiction Studies, Dr. Howard J. Shaffer, likened the Internet to new delivery forms for addictive narcotics. He stated, "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced." Bernie Horn, the executive director of the National Coalition Against Legalized Gaming, testified before Congress that Internet gambling "magnifies the potential destructiveness of the addiction."

Criminal Use

The problems associated with anonymity extend beyond youth and pathological gambling. Lack of accountability also raises the potential for criminal activities, which can occur in several ways. First, there is the possibility of abuse by gambling operators. Most Internet service providers (ISPs) hosting Internet gambling operations are physically located offshore; as a result, operators can alter, move, or entirely remove sites within minutes. This mobility makes it possible for dishonest operators to take credit card numbers and money from deposited accounts and close down. Stories of unpaid gambling winnings often surface in news reports and among industry insiders. In fact, several Web sites now exist that provide analysis of the payout activity for Internet gambling operations.

Second, computer hackers or gambling operators may tamper with gambling software to manipulate games to their benefit. Unlike the physical world of highly regulated resort-destination casinos, assessing the integrity of Internet operators is quite difficult. Background checks for licensing in foreign jurisdictions are seldom as thorough as they are in the United States. Furthermore, the global dispersion of Internet gambling operations makes the vigilant regulation of the algorithms of Internet games nearly impossible.

Third, gambling on the Internet may provide an easy means for money laundering. Internet gambling provides anonymity, remote access, and encrypted data. To launder

money, a person need only deposit money into an offshore account, use those funds to gamble, lose a small percent of the original funds, then cash out the remaining funds. Through the dual protection of encryption and anonymity, much of this activity can take place undetected. In a study prepared for the Office of Science and Technology Policy and the Financial Crimes Enforcement Network of the Critical Technologies Institute, David A. Mussington and colleagues examined the potential for money laundering on the Internet. The study raises several essential concerns regarding the use of the Internet for money-laundering activities, including the lack of uniform international law and oversight or regulatory regime, the fluidity of funds crossing international borders, and the high degree of anonymity.

II. State of the Law: The Applicability of 18 U.S.C. § 1084

Presently, the most widely applied federal statute addressing gambling on the Internet is 18 U.S.C. § 1084. According to this statute,

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.

This section makes illegal the use of wire communications to place or assist with placing bets or wagers. However, ambiguity does make its appearance. The section of the statute immediately following the quoted passage exempts the use of a wire communication facility to report on, provide information for, or assist with the placing of bets or wagers “from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country which such betting is legal.” The statute also outlines the obligation of communications carriers to discontinue providing services once notified of the illegal activity.

The applicability of 18 U.S.C. § 1084 to Internet gambling has given rise to a number of disputes over the past few years. For example, does the phrase “wire communications” include the Internet? Does the specific mention of “sports wagering” and “contests” include all types of gambling on the Internet? When placing a bet on the Internet, where does jurisdictional authority reside?

The debate over the applicability of the phrase “wire communications” to the Internet involves both the original intent of the law as well as the future of the technology. Some argue that because there was no technology known as the Internet at the time of the statute’s formulation, the intent of the law applies only to telephone communications. However, because Congress did not write the statute as “telephone communications,” it is argued that its intent was to include any and all wire communication devices. This debate, however, may be moot: Future technological advances may make it possible for individuals to bypass cables and telephone wires when establishing connections to the Internet. For example, cellular access to the Internet is presently available, and several companies are developing hand-held Internet devices that access satellite technology.

Perhaps through existing cellular technology and direct satellite feeds, information on the Internet will pass through most computers without any hard wire connection at all to communication devices.

A second point of contention arises over the forms of gambling to which 18 U.S.C. § 1084 applies. It is clear through the specification of “sporting event” that the statute applies to sports wagering. Because it lacks a clear definition of “contest,” however, the statute’s applicability to other forms of gambling is vague. Do contests include bingo, lotteries, or casino-style games?

Definitions are further clouded regarding the unique jurisdictional concerns of the Internet. The mention of “transmission” of bets or wagers or “information assisting in the placing of bets or wagers,” raises concerns over the definition of those words when applied to the Internet. Is posting a Web site that provides citizens an opportunity to engage in Internet gambling a “transmission” of illegal services and information? The question of who is facilitating the transmission of bets or wagers raises concerns. Where are bets and wagers taking place on the Internet? Are they taking place at the site where the person downloads a Web page onto a personal computer? Is the bet taking place at the point of financial transactions—that is, where the bank account, credit card, or smart card companies are located? Or is the bet or wager occurring at the ISP that hosts the Internet gambling site?

III. An Enhanced Federal Role at State Request

Given this and other experiences, several states have concluded that only the federal government has the potential to regulate or prohibit Internet gambling. In the words of Florida Attorney General Butterworth:

State law prohibits an individual in Florida from placing a bet or wager by wire communication or by use of the Internet. However... the burgeoning growth of the Internet and the difficulty in adopting and implementing durable and effective enforcement mechanisms, makes any effort to regulate the Internet’s use better suited to federal legislation, rather than a patchwork attempt by individual states.

To this end, the National Association of Attorneys General (NAAG) has called for an expansion in the language of the federal antiwagering statute to prohibit Internet gambling and for federal-state cooperation on this issue. In the view of the state attorneys general, existing federal legislation and regulation falls short in several major areas, including the definition of what constitutes gambling, the need for the law to specifically cover more types of communications devices, and the ambiguity regarding the legality of receiving information on bets or wagers.

NAAG’s position on Internet gambling is a rare stance by the association in support of increased federal law enforcement and regulation and is a clear indication of the regulatory difficulties posed by Internet gambling. NAAG usually argues against federal intrusion into areas of traditional state responsibility, such as gambling. However, in a letter to William A. Bible, a member of this Commission and Chairman of the Subcommittee on Regulation, Enforcement and the Internet, James E. Doyle, the attorney general of Wisconsin, wrote that “NAAG has taken the unusual position that this activity

must be prohibited by federal law, and that State regulation would be ineffective.” In addressing the issue of enforceability of the federal prohibition, Doyle emphasized that “simply because an activity is difficult to control does not mean law enforcement should be forced to stick its head into the sand and act as though the issue does not exist.”

Federal Efforts

The federal government has been active in the area of Internet gambling. Thus far, DOJ has investigated and brought charges against 22 Internet gambling operators on charges of violating the Wire Communications Act. All the defendants operated their businesses offshore and maintained that they were licensed by foreign governments. However, the defendants are U.S. citizens, some of whom were living in the United States at the time of their arrests. In a public statement following the charges, Attorney General Janet Reno announced, “The Internet is not an electronic sanctuary for illegal betting. To Internet betting operators everywhere, we have a simple message: ‘You can’t hide online and you can’t hide offshore.’”

Ongoing efforts aim to strengthen Federal regulation and prohibition of Internet gambling. Members in both chambers of Congress have introduced legislation to address Internet gambling. The Internet Gambling Prohibition Act, first introduced by Senator Kyl during the 105th Congress, provides for the prohibition of Internet gambling through amending the Wire Communications Act. As reintroduced during the 106th Congress, the bill would expand and/or clarify definitions within the statute to include the technology of the Internet and all forms of gambling. The enforcement mechanisms in the legislation include fines and/or imprisonment for people conducting business or participating in illegal gambling as well as measures against ISPs that provide communications service to Internet gambling Web sites.

IV. Recommendations

5.1 The Commission recommends to the President, Congress, and the Department of Justice (DOJ) that the federal government should prohibit, without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States or among parties in the United States and any foreign jurisdiction. Further, the Commission recommends that the President and Congress direct DOJ to develop enforcement strategies that include, but are not limited to, Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions. Because it crosses state lines, it is difficult for states to adequately monitor and regulate such gambling.

5.2 The Commission recommends to the President, Congress, and state governments the passage of legislation prohibiting wire transfers to known Internet gambling sites, or the banks who represent them. Furthermore, the Commission recommends the passage of legislation stating that any credit card debts incurred while gambling on the Internet are unrecoverable.

5.3 The Commission recognizes that current technology is available that makes it possible for gambling to take place in the home or the office, without the participant

physically going to a place to gamble. Because of the lack of sound research on the effects of these forms of gambling on the population and the difficulty of policing and regulating to prevent such things as participation by minors, the commission recommends that states not permit the expansion of gambling into homes through technology and the expansion of account wagering.

5.4 The Commission recommends to the President and Congress that because Internet gambling is expanding most rapidly through offshore operators, the federal government should take steps to encourage or enable foreign governments not to harbor Internet gambling organizations that prey on U.S. citizens.

Conclusion: Current Legislative Proposals

In conclusion, the Commission found that Internet gambling poses a potential threat to the nation. It puts our youth at risk, exacerbates pathological gambling, and opens the door for fraud and money laundering. For these reasons, the Commission recommended: 1) prohibiting Internet gambling not already authorized; 2) prohibiting financial transfers to Internet gambling sites; 3) limiting in-home gambling technologies; and 4) encouraging other nations to eradicate Internet gambling operations that prey on the U.S.

H.R.566 prohibits financial transfers and calls for working with other nations, and it would help limit in-home gambling. But all of this would apply only to “unlawful” Internet gambling. This implies of course that there are “lawful” forms of internet gambling as well, and opens the door to endless debate as to whether or not a given Internet gambling site is legal. In so doing, H.R.566 skips over the primary Commission recommendation on Internet gambling – prohibition – even though it addresses the other recommendations well.

The Subcommittee now has before it an alternative bill for consideration, H.R.2579, that removes the word “unlawful” from the text. This would prohibit Internet gambling per se and, in my opinion, more closely accomplish the full recommendations of the National Gambling Impact Study Commission on this critical matter. (Note that the Commission recommendation calls for prohibition, but allows for Internet gambling specifically and explicitly authorized as of the report’s release – if any – to continue without expansion.) So although H.R.566 is a good bill worth supporting, the alternative is, in my opinion, better.

Thank you Mr. Chairman for this opportunity to speak with you today. I ask that the attached article on gambling policy be entered into the record, and I would be glad to answer questions.

Attachment: [Gambling Backlash: Time for a Moratorium on Casino and Lottery Expansion](#), Timothy A. Kelly, Ph.D., March 17, 2000.