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An Analysis of the U.S. Gambling Act and its Aftermath

~ Alex Igelman and Joseph Kelly ~

INTRODUCTION

This article provides an overview of the recently enacted U.S. anti-Internet gambling Bill and explains the impact of the new law with respect to the definition of prohibited gambling. The article also notes that the possibility that any gaming operator who accepts U.S. betting customers should seriously consider postponing travel plans to the U.S. and avoid any stopover flights with a U.S. connection.

Although the impact of the recent legislation on on-line gaming operators is not clear, it has clearly affected the conduct of industry players. As of October 2, 2006, companies such as PartyGaming plc decided to no longer accept U.S. customers. Similarly, 888 Holdings recently suspended U.S. activities. Playtech Ltd., a software developer for on-line gambling, stopped licensing software to gaming operators who accept U.S. customers and has asked its licensees to block access to U.S. gamblers. FireOne Group plc, a global payment processing company, announced on October 10, 2006 that it would continue to "offer its multi-currency credit and debit card and FirePay electronic wallet processing to the on-line gambling industry originating from non-U.S. consumers and not prohibited by the Act". (emphasis added).²¹ World Gaming even declared that it may be forced out of business because of the new U.S. law.²²

The preceding reactions would indicate that publicly traded companies will conclude that termination of services to gamblers would be legally advisable. Private companies, however, may conclude that the new law does not mandate withdrawal from the U.S. market.

LEGAL IMPACT OF THE UNLAWFUL INTERNET GAMBLING ACT ON AN INTERACTIVE PRIVATELY HELD OFFSHORE GAMING OPERATOR

The *Unlawful Internet Gambling Enforcement Act* (the *UIGE Act*) was attached to an unrelated Bill, the *Safe Port Act*, just before the U.S. Senate recessed for a national election campaign and passed both Houses of Congress on September 30, 2006.²³

Does the Act Broaden the Definition of Prohibited On-line Gambling?

The definition of "gambling" is found in §5362 of the *UIGE Act* and reads as follows:

- (A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;
- (B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);
- (C) includes any scheme of a type described in section 3702 of title 28; (This pertains to the Professional and Amateur Sports Protection Act, which in effect prohibits sports betting except for Nevada)

At first glance, this language would seem to prohibit all Internet wagering except for exemptions specified in §5362 such as free games, fantasy sports, intrastate transactions, intratribal transactions and Interstate Horseracing.

However, § 5362 of the Bill contains the following provision:

(10) UNLAWFUL INTERNET GAMBLING.-

- (A) *In General-* The term 'unlawful Internet gambling' means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State Law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. (emphasis added)

Because of the wording in §5362(10), this Bill does not prohibit any additional forms of gambling that were not already prohibited prior to the passage of the *UIGE Act*. The legal status would be the same as that prior to the passage of the *UIGE Act*. At that time, most legal scholars and case law indicated that non-sports betting transactions were in a grey area of law and the consensus was that only on-line sports betting was prohibited by the *Wire Act* while other types of on-line gambling such as poker or casino style games were not. Notwithstanding the aforementioned consensus, the U.S. Department of Justice has always insisted that all Internet gambling is illegal.

The uncertainty of whether this Bill expands the definition of legal gambling is further exacerbated by the following statement in the "Congressional Findings and Purpose (§5361)":

- (b) Rules of Construction –No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

At the same time, §5363 of the *UIGE Act* specifically states that: "No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling....", a financial payment through methods such as credit cards or other forms of credit, electronic fund transfers or other means of money transmitting, checks or similar instrument and any other means set forth in the still to be drafted regulations. The *UIGE Act* sought to prevent these methods of funding for Internet gambling but did nothing to amend the *Wire Act*,²⁴ which the Department of Justice relies upon in support of its opinion that all on-line gambling is illegal. Thus it could be argued that the sole purpose of this Bill was to penalize gaming operators who accepted credit cards and electronic cash for prohibited gambling, namely, sports betting and only sports betting.

Under the *UIGE Act*, the financial transaction provider is not considered to be in the business of betting or wagering (§5362) (2) unless it operates, owns or controls an Internet wagering site (§5367). These provisions should have no realistic impact on any offshore provider as long as it

- 21. "FireOne Group plc – Further re US Legislation", AFX News Limited, October 10, 2006.
- 22. "World Gaming suspended amid fears of imminent collapse", The Independent, October 10, 2006.
- 23. 109th U.S. Congress (2005-2006) H.R. 4411 [109th]; Internet Gambling Prohibition and Enforcement Act
- 24. 18 U.S.C. § 1084.

remains totally offshore and its executives do not visit the United States.

Legal experts who have been involved in the field of Internet gambling such as I. Nelson Rose have serious doubts as to whether the *UIGE Act* has led to an expansion of the scope of criminal liability. In commenting on the Act, Rose expressed the following view:

That's a major weakness of the new measure. . . . It left out expanding the reach of the *Wire Act*, so poker sites can say "we're not covered by that".²⁵

Similarly, Anthony Cabot, an Internet gaming expert, in an opinion for Fun Technologies Inc. (AIM:FUN) stated:

If skill games are not unlawful under applicable state or Federal law, then they are not unlawful under this Act. The sponsors of this legislation repeatedly asserted that nothing . . . in this Act converts currently legal activities to unlawful activities.²⁶

Unfortunately, for skill-based gaming providers, the *UIGE Act* did not expand the scope of what was deemed to be permitted gambling. The original Goodlatte Bill, HR 4777, the *Internet Gambling Prohibition Act*, attempted to amend the *Wire Act*, and might have significantly expanded the definition of permitted gambling. Specifically, the draft Bill would have included the following definition of the term "bets or wagers" in Section 2(b):

- (A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a **game predominantly subject to chance**, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome; (**emphasis added**)

The Department of Justice testified before a Congressional subcommittee on April 5, 2006 that it had concerns with some of the Goodlatte bill definitions and stated:

For example, since the definition of the term 'bet or wager' requires that the activity be 'predominately subject to chance,' we are concerned whether this definition is sufficient to cover card games, such as poker.

While this language was not in the final Bill adopted by Congress, it does indicate that the Department of Justice may be aware of the distinction between games of skill and games of chance and may explain why there has been minimal federal interest in interactive poker.

If the Act does not Expand Prohibited Gambling, What is the Present Legal

Status of an On-line Gaming Site Located Outside the United States with Regard to Federal Law?

The issue is complicated by the fact that the opinion of the U.S. Department of Justice has been that all interactive gambling, including interactive, interstate, state-licensed horseracing, is illegal. Furthermore, advertisers and suppliers may be in violation of the United States Code for aiding and abetting on-line gaming operators.

The U.S. Justice Department warned the U.S. Virgin Islands (January 2, 2004) that its present interactive gambling law would violate federal law. It also informed the State of North Dakota (March 7, 2005) that its proposed legislation, which would have regulated interactive poker, would be a violation of federal law. The Department of Justice has even asserted in a letter to Rep. John Conyers, dated July 14, 2003 that the December 2000 amendment to the *Interstate Horseracing Act* did not legalize interstate interactive horserace wagering between states that have licensed companies such as Youbet. Thus, according to the Department of Justice, Youbet and other companies accepting interactive horserace wagering from different states are in violation of federal law. In support of their opinion, the Justice Department relies primarily on three federal statutes that were passed long before the development of interactive gaming, viz., the *Wire Act*,²⁷ the *Travel Act*,²⁸ and the *Anti-Gambling Act*.²⁹

(A) The Wire Act

An Internet gaming operator might be liable under the *Wire Act* if it participates in offshore sports betting,³⁰ but likely would not be liable for entering into a contract concerning a U.S. bettor that involved offshore casinos, poker or lotteries. While the Justice Department may insist that the *Wire Act* prohibits all Internet gambling, the *Wire Act* was specifically found by the Fifth Circuit Court of Appeals to apply only to sports betting. In *MasterCard International Inc., Re* (hereinafter referred to as "*In Re Mastercard*")³¹, the district court had to determine in multidistrict litigation whether numerous plaintiffs who lost money while wagering at offshore casinos could recover losses from their credit card companies. The plaintiffs had hoped to obtain class status to pursue a civil *Racketeer Influenced and Corrupt Organizations Act (RICO)* claim against credit card companies such as MasterCard. In order to assert a *RICO* claim, the plaintiffs would have to show, inter alia, "that Internet gambling violates the several federal and state statutes as alleged in the complaint".³²

The district court concluded that the *Wire Act*³³ was applicable only to sports wagering.

However, even a summary glance at the recent legislative history of Internet gambling legislation reinforces the Court's determination that Internet gambling on a game of chance is not

prohibited conduct under 18 U.S.C. § 1084. Recent legislative attempts have sought to amend the *Wire Act* to encompass "contest[s] of chance or a future contingent event not under the control or influence of [the bettor]" while exempting from the reach of the statute data transmitted "for use in the new reporting of any activity, event or contest upon which bets or wagers are based." See S. 474, 105th Congress (1997). Similar legislation was introduced in the 106th Congress in the form of the "*Internet Gambling Prohibition Act* of 1999." See S. 692, 106th Congress (1999). That Act sought to amend Title 18 to prohibit the use of the Internet to place a bet or wager upon "a contest of others, a sporting event, or a game of chance . . ." (Id) As to the legislative intent at the time the *Wire Act* was enacted, the House Judiciary Committee Chairman explained that "this particular bill involves the transmission of wagers or bets and layoffs on horseracing and other sporting events." See 107 Cong. Rec. 16533 (Aug. 21, 1961). Comparing the face of the *Wire Act* and the history surrounding its enactment with the recently proposed legislation, it becomes more certain that the *Wire Act's* prohibition of gambling activities is restricted to the types of events enumerated in the statute, sporting events or contests. Plaintiffs' argument flies in the face of the clear wording of the *Wire Act* and is more appropriately directed to the legislative branch than this Court.³⁴

The United States Court of Appeals affirmed the district court's analysis that the *Wire Act* was not applicable to anything other than sports wagering:

The district court concluded that the *Wire Act* concerns gambling on sport-

25. I. Nelson Rose, "Bad Luck for Online Gaming", Los Angeles Times, Oct. 3, 2006.
26. "Fun Technologies - Statement", October 9, 2006. AFX News Limited.
27. 18 U.S.C. § 1084.
28. 18 U.S.C. § 1952.
29. 18 U.S.C. § 1955.
30. See, e.g., *U.S. v. Cohen*, 260 F.3d 68 (U.S. 2nd Cir. Ct. App. N.Y., 2001).
31. 132 F.Supp.2d 468 (U.S. E.D. La., 2001), affirmed 313 F.3d 257 (U.S. La. Ct. App. 5th Cir., 2002).
32. *MasterCard International Inc., Re* at 478.
33. 18 U.S.C. § 1084.
34. *MasterCard International Inc., Re* at 480-481.

ing events or contests and that the plaintiffs had failed to allege that they had engaged in Internet sports gambling. We agree with the district court's statutory interpretation, its reading of the relevant case law, its summary of the relevant legislative history, and its conclusion. The plaintiffs may not rely on the *Wire Act* as a predicate offence here Because the *Wire Act* does not prohibit non-sports Internet gambling, any debts incurred in connection with such gambling are not illegal.³⁵

In *In Re MasterCard*, the standard of proof was a preponderance of the evidence. In a criminal case, the federal government would have to prove a violation of the law beyond a reasonable doubt. If the Court rejected the argument in *In Re MasterCard* because they could not show a violation of a statute by a preponderance of the evidence, then how could the government prove a *Wire Act* violation beyond a reasonable doubt? It should be noted that the U.S. Department of Justice was not a party to the *In Re MasterCard* case.

(B) Travel Act and Anti-Gambling Act

The Justice Department also relies on the *Travel Act* and the *Anti-Gambling Act* which provide harsh criminal penalties. The *Travel Act* states in relevant part:

18 U.S. @ §1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

- (a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to —
 - (i) distribute the proceeds of any unlawful activity; or
 - (ii) commit any crime of violence to further any unlawful activity; or
 - (iii) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of an unlawful activity.

The *Anti-Gambling Act* states in relevant part:

18 U.S. @ §1955. Prohibition of illegal gambling businesses.

Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

- (b) As used in this section —
 - (1) "illegal gambling business" means a gambling business which - -

- (A) is a violation of the law of a State or political subdivision in which it is conducted;
- (B) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
- (C) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day. (Emphasis added)

The *Anti-Gambling Act* would apply only in the case of a violation of state law, while the *Travel Act* would apply in the case of a violation of either another federal law or a state law. In other words, the activity must already be illegal prior to prosecution under either statute. These Acts were considered in *Casino City v. Justice Department*³⁶ in which an advertising entity sought a declaratory judgment (an advisory opinion) that its First Amendment rights were in jeopardy because it might be found to be aiding and abetting a criminal activity. One commentator, in discussing this case, stated:

Due to this inherent limitation, the DOJ has not relied heavily on these statutes *Travel Act* and *Anti-Gambling Act*. In its motion to dismiss *Casino City's* complaint, the DOJ did not offer any justification as to why it believed Internet gambling was illegal under the *Travel Act* or the *Illegal Gambling Business Act*³⁷

At a minimum, it would seem that under current federal laws, interactive gaming such as poker, and casino style gaming may not be illegal as a result of the decision in the *In Re MasterCard* case.

WOULD ANY STATE LAW POSE A SIGNIFICANT RISK TO AN ON-LINE POKER OPERATOR?

Except for sporadic criminal proceedings initiated in the late 1990s in various states such as Wisconsin, Missouri, and Minnesota, legal actions in states such as New York and New Jersey since 2000 have been limited primarily to civil proceedings brought against financial transaction providers such as Citibank or offshore sports operators. Interestingly, the Attorneys General of 49 states supported the enactment of federal law to prohibit Internet gambling which is most unusual since states are often wary of federal encroachment on their jurisdiction.³⁸ Approximately eight states (Illinois, Indiana, Louisiana, Michigan, Nevada, Oregon, South Dakota, and Washington) have passed legislation to prohibit Internet gambling. The most extreme was a Washington State Bill³⁹ which amended a

state statute in 2006 to make Internet gambling, even by a punter, a Class C felony which would be similar to a sexual assault allegation. There have been few prosecutions under state statutes and the only player to be charged was a North Dakota resident who received a \$500 fine and a one-year deferred sentence.

Recently, Louisiana has taken action against an on-line gaming operator. The Louisiana statute is so broad that it might be considered to include everyone involved in Internet gambling except passive investors or players. It states:

E. Whoever designs, develops, manages, supervises, maintains, provides, or produces any computer services, computer system, computer network, computer software, or any server providing a Home Page, Web Site, or any other product accessing the Internet, Word Wide Web, or any part thereof offering to any client for the primary purpose of the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit shall be fined not more than twenty thousand dollars, or imprisoned with or without hard labour, for not more than five years, or both.⁴⁰

Unlike Louisiana, Michigan has realized the futility of proceeding against on-line gaming operators. In March 2006, a Michigan resident won a 1.7 million dollar jackpot at an on-line Caribbean based casino. The Michigan Attorney General had threatened to confiscate the winnings because the player had violated Michigan's 1999 Anti-Internet Gambling Law. The Attorney General did not consider taking action against the on-line casino on the grounds that because the casino in question was based in the Caribbean, the state had no authority in the matter and the

35. *MasterCard International Inc., Re*, 313 F.3d 257 (U.S. La. Ct. App. 5th Cir., 2002), 262, 263.
 36. *Casino City v. United States Department of Justice*, F.Supp.2d., Civil Action No. 04-557-B-M3 (M.D. La. 2004).
 37. Megan E. Frese, "NOTE: Rolling the Dice: Are Online Gambling Advertisers 'Aiding and Abetting' Criminal Activity or Exercising First Amendment-Protected Commercial Speech?" 15 *Fordham Intell. Prop. Media & Ent. L.J.*, 547,552.
 38. "Attorneys General for 49 States Seeking Congressional Help." *Journal Record Legislative Report*. March 23, 2006.
 39. S.B. 6613.
 40. *La Rs 14:90 (3)(E) "Gambling by Computer"*.
 41. *Interactive Gaming News*, March 21, 2006.
 42. §5362 (10)(A).

issue should be handled by the federal government.⁴¹

One cautionary note is that the *UIGE Act*² defines unlawful Internet gambling to be the receiving of a bet where it is unlawful "under any applicable federal or state law. . ." (*emphasis added*). Thus it might be advisable to exclude players from those eight states that have prohibited Internet gambling by statute. However, there are two arguments against the assertion that the *UIGE Act* should be interpreted to have made it a federal crime to engage in illegal state interactive gaming.

First, any state law prohibiting Internet gambling might be in violation of the commerce clause of the U.S. Constitution. Second, it could be argued that the federal government already has authority to prosecute illegal state gambling under the *Anti-Gambling Act*.⁴³

THE DORMANT COMMERCE CLAUSE

It is uncertain whether any state Internet gambling legislation might violate the dormant Commerce Clause of the United States Constitution. Joseph M. Kelly, asserted in an article entitled "*Internet Gambling Law*"⁴⁴ that state regulation of the Internet may be a violation of the dormant Commerce Clause. Other authorities on Internet gaming have reached the same conclusion. Lawrence Walters Esq. concludes in an article "*Will the Commerce Clause Save Online Gaming?*"

As individual states start enforcing online gambling restrictions against players and gambling enterprises, Commerce Clause issues are certain to be raised as a defence. Legal experts and the courts will likely debate these issues for years to come, but one thing is certain: The dormant Commerce Clause creates significant uncertainty regarding the ability of state governments to constitutionally regulate Internet gambling activities.⁴⁵

In *American Libraries Association v. Pataki*⁴⁶, a New York state law prohibiting Internet child pornography was challenged as unconstitutional because it was in violation of the First Amendment and the Interstate Commerce Clause of the United States Constitution. The judge did not address the First Amendment issue because she concluded that the state law concerning the Internet violated the Commerce Clause. This decision is not binding on all US courts, but may be indicative of any judicial analysis of state Internet legislation.

THE ANTI-GAMBLING ACT

It can be argued that the *Anti-Gambling Act* already criminalized state anti-gambling laws. However, the Department of Justice has rarely prosecuted any criminal cases against a casino, poker or bingo site prior to the passage of the

UIGE Act. Whether their position will change with the adoption of the *UIGE Act* is anyone's guess. However, unless it could be clearly shown that the law with regard to unlawful Internet gaming has changed to include poker and casino sites, prosecution may be unlikely under federal statutes. This does not mean that they could not prosecute under the laws of one of the states that prohibit Internet gambling, though the Department of Justice could have prosecuted under state law pursuant to the *Anti-Gambling Act*⁴⁷ and never did so.

LIKELIHOOD OF PROSECUTION AGAINST REPRESENTATIVES OF ON-LINE GAMING CORPORATION

If one works for an on-line gaming corporation that accepts bets from a prohibited jurisdiction, it is possible you and not the company will be arrested and even imprisoned. As explained by Lord Denning, Master of the Rolls in the mid 1960s, it is very difficult to take criminal action against gaming corporations because they have "no body to be imprisoned and no soul to be damned." This is especially true when the corporation is in a different country. For example, BetonSports has principal offices in London and in Costa Rica. When the U.S. Justice Department brought civil charges against BetonSports, it proved extremely difficult to serve process on that entity from the U.S. In *U.S. v. BetonSports*,⁴⁸ the Court found that attempted service by the U.S. was inadequate.

Recently, the gaming community was startled to discover that the U.S. government had arrested David Carruthers, the then C.E.O. of BetonSports, and that Louisiana had issued a warrant which resulted in the arrest of Peter Dicks, then a non-executive Director of SportingBet. The French government also arrested two executives of BWIN. All four defendants were released on bail ranging from \$50,000 for Dicks, €300,000 each for the BWIN executives and \$1M for Carruthers.

What are the chances of imprisonment? It would seem that Carruthers is not a major character in the indictment of 11 persons and four companies by the U.S. attorney. In fact, he is barely mentioned in the indictment and it would seem the federal authorities are actually seeking to prosecute Gary Kaplan, a bookie with an allegedly shady past.⁴⁹ When the U.S. government brought proceedings against 21 defendants in 1998 alleging that they conspired to violate the *Wire Act*, none of the defendants was sentenced to prison except for Jay Cohen, who voluntarily returned from Antigua to fight the charges. If Cohen had agreed to a plea bargain after failing to win dismissal of the charges in pre-trial motions, it is probable he would not have served prison time. Another defendant sought to have the charges dismissed, and when he failed, he reached a plea bargain with the U.S. government and served no jail time.⁵⁰

Unlike the 1998 indictments, nobody really knows whether he/she may be on a secret list of individuals who might be subject to arrest even while travelling through the United States. Moreover, the supply of on-line gaming services to an on-line operator could result in detention based on the charges of aiding and abetting. Concerning a passive shareholder, Louisiana law enforcement stated they were targeting "people directly involved in on-line gambling operations and . . . shareholders in the companies were not at risk of arrest."⁵¹ Yet even a janitor who only served coffee to bettors and stacked chairs was found guilty for participating in an illegal gambling business.⁵²

While Carruthers was under house arrest while awaiting an evidentiary hearing, his lawyers have waged an aggressive defence. For example, in an unsuccessful motion to compel the government to produce non-public grand jury and petit jury material, at least 11 major law firms represented various defendants in the Carruthers/BetonSports proceedings.⁵³

The Louisiana arrest of Dicks is a totally different situation from that of Carruthers. Unlike Carruthers, Dicks was a non-executive director of SportingBet who was arrested when arriving in New York for business unrelated to gaming. Louisiana is one of eight states that has enacted anti-Internet gambling legislation, but is the only state that has recently prosecuted an on-line gambling executive without allegations of fraud. Apparently, over 50 warrants are currently outstanding against on-line executives whose companies accept Louisiana customers.⁵⁴ Unlike almost any other jurisdiction, the decision to prosecute was made by a zealous state policeman who is not a lawyer. Governor George Pataki of New York refused to extradite Dicks once it was disclosed that Dicks had not been in Louisiana for decades. However, if Dicks were to fly to an airport in a jurisdiction such as Texas, he could still be extra-

43. 18 U.S.C. §1955
44. 26 Wm. Mitchell L. Rev., 117, 170-171 (2000).
45. Interactive Gaming News, July 15, 2005.
46. 969 F.Supp. 160 (U.S. D. N.Y., 1997), 168-169.
47. 18 U.S.C. §1955.
48. 2006 U.S. Dist. Lexis 55553.
49. "Carruthers May Strike Plea Bargain" August 22, 2006, Gaming Business.
50. See *U.S. v. Ross*, 1999 U.S. Lexis 22351.
51. "Dicks decision in balance" Financial Times, Sept. 22, 2006.
52. *U.S. v. Merrell*, 701 F.2d 53 (U.S. 6th Cir. Mich., 1983).
53. *U.S. v. BetonSports et al*, 2006 U.S. Dist. Lexis 63824.
54. The Times, September 15, 2006.

dited to Louisiana pursuant to the outstanding warrant.

The French government, perhaps inspired by the U.S., has arrested two executives of the Austrian company BWIN. Unlike the U.S., the executives were arrested for violation of French legislation which only permits wagering by licensed monopolies.⁵⁵ The executives were arrested in France while publicizing an agreement with a French soccer team. Most experts speculate the arrest was a result of pressure brought by state-owned monopolies, Francaise des Jeux (FDJ), which operates the national lottery, soccer (football) pools and scratch cards as well as Pari Mutuel Urbain (PMU) which has a horse racing wagering monopoly. In fact, an FDJ spokesperson stated: "We are doing exactly the same as the authorities in the U.S. who arrested the British executives."⁵⁶

Apparently, the French magistrate had been investigating alleged illegal Internet wagering since November 2005 and PMU and FDJ had filed a complaint against BWIN in April 2005. The two executives were kept in jail over the weekend and released on bail of €300,000 each, and informed by the French magistrate that they

could be imprisoned for up to three years if convicted of violating French gaming laws.

Unlike the United States, France is subject to the laws of the European Community. The *Gambelli*⁵⁷ decision prohibited discrimination by member states against licensed wagering in other member countries without a good reason. *Gambelli* left uncertain what constitutes "necessary and not discriminatory". By mid-September 2006, the European Commission announced that it was scrutinizing France and seven other states for impermissible gaming discrimination. A spokesperson for the EU Market Commission, while refusing to comment directly on the arrest of the two executives, stated:

You cannot say to Operator A, which happens to be a state monopoly making a lot of money, 'Yes, you can do this,' and then tell Operator B, which is in the private sector, that it cannot do the same thing.⁵⁸

France, along with Italy and Austria, was informed in a "letter of formal notice" that its gambling laws may be in violation of European Union rules.⁵⁹ □

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58. Eric Pfanner, "Private-public clash on gambling; Detention of executives seen as move to protect state revenue," International Herald Tribune, September 19, 2006.
59. "EU Nations Face Censure over Curbs on Gambling", Austria Today, October 10, 2006.