

Does Internet Gambling Strengthen the U.S. Economy? Don't Bet on It.

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I. INTRODUCTION

Commercial gambling in the United States is a mammoth industry. In the past few decades, the United States developed from a country with few gambling options to one permitting some form of legalized gambling in every state except Utah and Hawaii.¹ A series of incremental decisions by local and state governments paved the way for tremendous growth in the gambling industry.² Presently, a new wave of technology affects this industry. Legislators and regulators must deal with the phenomenon of Internet gambling—once dubbed “the crack cocaine of gambling.”³

The advent of the Internet introduced an entirely new medium for individuals to participate in gambling activities. Unlike traditional land-based casinos, the action at online casinos is perpetual and available to anyone with Internet access.⁴ Many online gambling sites operate from locations such as Antigua and Belize, unsupervised by U.S. government regulators.⁵ Perhaps the most frightening aspect of Internet gambling is the rampaging growth of the young industry. The Internet gambling explosion poses serious concerns to society.

This Note asserts that Internet gambling must be curbed to lessen its negative impact on the American economy. Many state and local governments are dependent on tax revenues associated with traditional forms of gambling. Internet gambling not only deprives the economy of these valuable tax revenues, but also costs the economy valuable jobs and assorted fees associated with traditional gambling. In order to lessen its negative impact on the economy, Internet gambling must be more judiciously regulated in the United States.

This Note provides a general overview of Internet gambling in Part II. Included in this section are discussions on the history of gambling, the current statutory landscape of Internet gambling, and relevant cases on

1. Bruce P. Keller, Essay, *The Game's the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 YALE L.J. 1569, 1577 (1999).

2. *National Gambling Impact Study Commission Final Report: Hearing Before the Senate Comm. on Indian Affairs*, 106th Cong. 1 (1999) (statement of Hon. Ben Nighthorse Campbell, Chairman of the Comm. on Indian Affairs) [hereinafter NGISC], available at <http://www.ngisc.gov>.

3. Mike Brunner, *Net Betting Bill Signed in Nevada*, at <http://www.msnbc.com/news/578499.asp> (last visited Aug. 22, 2001) (quoting Sen. Jon Kyl).

4. Keller, *supra* note 1, at 1569-70.

5. *Id.* at 1570-71.

Internet gambling. An analysis of the negative consequences of Internet gambling appears in Part III, followed by a discussion on viable options to curb Internet gambling in Part IV. This Note concludes in Part V with recommendations for limiting the negative effects of Internet gambling on the economy.

II. BACKGROUND ON INTERNET GAMBLING

In order to understand the impact of Internet gambling in America, it is critical to understand how this phenomenon developed. This section begins with a broad overview of the history of Internet gambling. The overview discusses the legalization of traditional gambling in America, as well as the rapid increase in Internet gambling over the past few years. Next, this section analyzes the statutory landscape surrounding Internet gambling. This portion includes a detailed discussion on four laws, or proposed laws, that impact Internet gambling. This federal legislation includes the Interstate Wire Wager Act (Wire Act) and the Indian Gaming Regulatory Act (IGRA), as well as two failed bills—the Internet Gambling Prohibition Act of 1997 (IGPA of 1997) and the Internet Gambling Prohibition Act of 1999 (IGPA of 1999). Lastly, this section considers relevant Internet gambling cases. Due to the infancy of the industry, few Internet gambling cases have been tried. The cases that exist, however, possess broad implications for the entire Internet gambling industry.

A. *History of Internet Gambling*

Gambling predates America. According to some philosophers, gambling began in the Garden of Eden. Some have posited that Eve ate the infamous apple to settle a bet she made with the serpent about the number of seeds in the apple.⁶ In America, different forms of gambling, notably lotteries, remained popular until the 1890s when lotteries and all other forms of gambling were made illegal by direct prohibition.⁷ Gambling was reintroduced to Americans during the 1920s. During this time, gambling became more accepted due to the holding of bingo sessions by churches and the building of legitimate racetracks.⁸ In 1931, gambling became completely legalized in Nevada to provide a replacement for lost revenues after the ore-rich mountains became depleted.⁹ Until thirty years ago, the primary legal option for gamblers was to visit Las Vegas.

6. INTERNATIONAL GAMING INSTITUTE, THE GAMING INDUSTRY: INTRODUCTION AND PERSPECTIVES 3 (1996).

7. RUFUS KING, GAMBLING AND ORGANIZED CRIME 11 (1969).

8. BERTHA DAVIS, GAMBLING IN AMERICA: A GROWTH INDUSTRY 12 (1992).

9. *Id.* at 19.

During the 1970s Atlantic City, New Jersey legalized casino gambling. Over the past two decades, riverboat casinos, poker clubs, Indian reservation casinos, and state lotteries developed throughout the United States.¹⁰ In 1997, Americans spent more money on gambling (approximately \$50 billion) than on recorded music, theme parks, video games, and movie tickets combined (approximately \$39.9 billion).¹¹ The ongoing development and increasing influence of the Internet led gambling interests to shift online. Thus, a new industry was born on August 18, 1995, when the first online casino, Interactive Casinos, Inc., began business.¹²

The Internet is an international network of interconnected computers that was first contrived in the 1960s.¹³ By the 1980s, the Internet grew to over 50,000 networks and was used for daily functions.¹⁴ The Internet has grown tremendously in the past decade as individuals have utilized its wide variety of communication and information retrieval methods.¹⁵ As a result, the accessibility and convenience of Internet usage have spawned a new method of gambling. Thanks to the Internet, gamblers can partake in their preferred choice of gambling from the confines of their homes. As the chairperson of the National Coalition Against Gambling Expansion stated, online gamblers can “literally click their mouse and bet the house.”¹⁶

In 2000, Internet gambling brought forth an estimated \$2.2 billion in worldwide revenues,¹⁷ a figure that dwarfed the estimated \$300 million gambled online in 1997.¹⁸ According to an article in the *ABA Journal*, online wagering could reach \$100 billion a year by 2006.¹⁹ Consumer spending on traditional gambling generated a \$61.4 billion input to the U.S. economy in 2000.²⁰ Of that \$61.4 billion, about thirty-four cents of every

10. David I. Gold, *Internet Gambling Debt Liability: Trouble Ahead? A Consideration of Providian v. Haines*, 22 T. JEFFERSON L. REV. 219, 222 (2000).

11. See NGISC, *supra* note 2, at 4.

12. Jenna F. Karadbil, Note, *Casinos of the Next Millennium: A Look into the Proposed Ban on Internet Gambling*, 17 ARIZ. J. INT'L & COMP. LAW 413, 415 (2000).

13. *Reno v. ACLU*, 521 U.S. 844, 849 (1997).

14. Gold, *supra* note 10, at 220.

15. *Reno*, 521 U.S. at 851.

16. *Internet Gambling Act of 1997: Hearings on S. 474 Before the Subcomm. on Tech., Terrorism, and Gov't Info. of the Senate Comm. on the Judiciary*, 105th Cong. 19 (1997) (statement of Ann Geer, Chairperson of the National Coalition Against Gambling Expansion).

17. Doug Bedell, *Millions Lay Money Down in World of Virtual Casinos*, DALLAS MORNING NEWS, July 5, 2001, available at http://www.dallasnews.com/technology/410879_netgambling_05.html.

18. NGISC, *supra* note 2, at 21.

19. Debra Baker, *Betting on Cyberspace: When It Comes to the Future of Internet Gambling, All Wagers Are Off*, 85 A.B.A. 54, 55 (1999).

20. *Gambling on the Internet: Hearing Before the Subcomm. on Oversight and*

dollar, or more than \$20 billion, was received by the government in the form of a gambling privilege tax.²¹ It is estimated that more than 4.5 million Americans have gambled online at least once.²² Online sports books presently collect more money from the Super Bowl than from all of the sports bookies in Las Vegas combined.²³

B. *Statutory Landscape of Internet Gambling*

Gambling is traditionally regulated on a state-by-state basis, with minimal uniformity and little federal oversight.²⁴ One reason for this lack of uniformity lies in the great variation of philosophies among the states. Utah and Hawaii prohibit any form of gambling, whereas Nevada relies on gambling as a major source of revenue. Efforts to regulate Internet gambling are better addressed by federal legislation as it is difficult for states to adequately monitor and regulate such gambling.²⁵ The National Gambling Impact Study Commission recommended that states are best suited to regulate gambling in all but two areas: Internet gambling and tribal gambling.²⁶ Additionally, Internet gambling poses major challenges for local and state law enforcement authorities. Nonetheless, federal legislation does exist to regulate gambling in America. This legislation ranges from the generation-old Wire Act²⁷ to more modern attempts like the IGPA of 1999.²⁸

1. The Wire Act

Congress passed the Wire Act in 1961 to prohibit individuals from utilizing telephone facilities to receive bets.²⁹ The Wire Act “most directly precludes efforts to use the Internet to communicate with U.S.-based

Investigations of the House Comm. on Fin. Servs., 107th Cong. (2001) (statement of Sebastian Sinclair, Vice-President, Christiansen Capital Advisers, LLC) [hereinafter Sinclair Statement], available at <http://www.house.gov/financialservices/071201ss.pdf> (last visited Aug. 25, 2001).

21. *Id.*

22. Bedell, *supra* note 17 (“The Pew Internet and American Life project estimates that . . . [a]t least one million [Americans] make an Internet gambling junket every day.”).

23. *60 Minutes: Any Given Sunday; Antiguan Online Gambling Company’s Legitimacy Being Tested in US Court Case* (CBS television broadcast, Jan. 7, 2001) [hereinafter *Any Given Sunday*].

24. See Tom Lundin, Jr., Note, *The Internet Gambling Prohibition Act of 1999: Congress Stacks the Deck Against Online Wagering but Deals in Traditional Gaming Industry High Rollers*, 16 GA. ST. U. L. REV. 845, 855 (2000).

25. Cf. NGISC, *supra* note 2, at 35.

26. *Id.* at 29.

27. 18 U.S.C. § 1084 (1994).

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

29. See 18 U.S.C. § 1084(a) (1994).

gamblers.”³⁰ The Wire Act criminalizes the use of “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”³¹ It is important to note that “[t]he language [of the Wire Act], on its face, is broad enough to cover Internet gambling.”³² Individual bettors, however, cannot be prosecuted under the Wire Act.³³

One major problem hampering the Wire Act’s effect on Internet gambling is that it was enacted in 1961, when it was impossible to foresee what technological advances would be achieved. With the advent of wireless Internet access, uncertainty exists as to whether the Wire Act is applicable to a transaction performed on a wireless device. Due to advances in wireless technology, future legislation must address problems that were not conceived by the drafters of the Wire Act.

2. Internet Gambling Prohibition Act of 1997

The IGPA of 1997 represented one of many attempts by Senator Jon Kyl of Arizona to limit Internet gambling. The 1997 Kyl bill, which passed the Senate by a ninety to ten vote,³⁴ would have amended the Wire Act by penalizing the individual bettor.³⁵ The 1997 Kyl bill would have also enlarged the scope of the Wire Act to include any type of bet placed on the Internet.³⁶ Three levels of enforcement existed under the 1997 version of the IGPA.³⁷ These levels included fines, imprisonment, and a mandated elimination of the particular Internet gambling site.³⁸

The 1997 Kyl bill included exemptions for horse racing and fantasy sports.³⁹ The fantasy sports exemption excluded participation where “winners receive a prize if such participation is without charge to the participant or any charge is limited to a reasonable administrative fee.”⁴⁰ Groups that were displeased with the 1997 Kyl bill included Native

30. Keller, *supra* note 1, at 1578.

31. 18 U.S.C. § 1084(a) (1994).

32. Keller, *supra* note 1, at 1581.

33. Lundin, Jr., *supra* note 24, at 856-57.

34. Joseph M. Kelly, *Internet Gambling Law*, 26 WM. MITCHELL L. REV. 117, 134 (2000).

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

36. Kelly, *supra* note 34, at 136.

37. Karadbil, *supra* note 12, at 429.

38. *Id.*

39. Kelly, *supra* note 34, at 136.

40. *Id.*

Americans and Internet service providers (“ISPs”).⁴¹ Native American tribes were unable to gain an exemption for Internet lotteries.⁴² ISPs were angered because the bill would have allowed federal authorities to terminate customer accounts that had participated in Internet gambling.⁴³

After passing in the Senate, the IGPA of 1997 had to be reconciled with a similar version from the House. The House Subcommittee on Crime approved the bill, but due to a shortage of time, the bill was never voted on in the House.⁴⁴ The 105th Congress did not pass the IGPA of 1997.

3. Internet Gambling Prohibition Act of 1999

On March 23, 1999, Senator Kyl introduced a new Internet gambling bill known as the IGPA of 1999.⁴⁵ The 1999 Kyl bill differed from the 1997 bill in that the 1999 bill, like the Wire Act, did not attempt to criminalize the individual bettor.⁴⁶ The IGPA of 1999 covered both sports gambling and casino games. Under the IGPA of 1999, officials from companies that offer Internet gambling could be fined the amount their businesses received in bets via the Internet or \$20,000, whichever was greater, and/or be imprisoned for not more than four years.⁴⁷

The IGPA of 1999 did not attempt to amend the Wire Act, but instead proposed “a new section 1085 to title 18 of the United States Code.”⁴⁸ The IGPA of 1999 defined a gambling business to include any betting activity that involves one or more persons, that is in continuous operation for over ten days, or that generates gross revenues of \$2,000 or more during a twenty-four hour period.⁴⁹ The 1999 bill also contained more exemptions to appease special interest groups. These exemptions included provisions for

41. *Id.* at 137.

42. *Id.*

43. *Id.*

44. *Id.* at 143.

45. See Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (1999). The 1999 Kyl bill received strong support from a diverse group, ranging from the National Council of Churches to the American Gaming Association. In addition, the NCAA and the NFL supported the legislation as a means of maintaining the integrity of their sports. Michael Nelson, *The Lottery Gamble: Gambling Online*, AM. PROSPECT, June 4, 2001, at 21, available at <http://www.prospect.org/print/V12/10/nelson-m.html>.

46. Karadbil, *supra* note 12, at 430. A spokesman for Illinois Attorney General Jim Ryan noted: “Rarely, in any of our gambling prosecutions, will we go after individual John Smiths. We try to focus on people a little higher in the chain.” Gary Dretzka, *Rolling the Dice on Internet Gambling: Casinos, Nevada Look to Create a Web of Wagering at Home*, CHI. TRIB., June 15, 2001, at C1.

47. See Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (1999).

48. Kelly, *supra* note 34, at 145.

49. See Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. § 2(a)(4)(A)(i)-(iii) (1999).

state lotteries, horse and dog racing that utilizes closed-loop, subscriber-based services, and any lawful bets placed for a fantasy sports league.⁵⁰ Finally, the bill provided for injunctive relief against ISPs⁵¹ and for a report by the United States Attorney General within three years concerning Internet gambling.⁵²

The IGPA of 1999 was passed in the Senate on November 19, 1999 and submitted to the House.⁵³ A majority of the House voted for similar legislation sponsored by Representative Bob Goodlatte in July of 2000. Because the bill was introduced under suspended rules, however, a two-thirds majority was required for passage.⁵⁴ The bill fell twenty-five votes short of the required two-thirds majority.⁵⁵

Ultimately, a variety of objections prevented the IGPA of 1999 from becoming law. Chief among these objections was the fear that the IGPA of 1999 would actually increase gambling by permitting wagering on horse racing at home.⁵⁶ While Senator Kyl failed again to place the Internet gambling ban onto President Clinton's desk, the possibility remains for another amended Internet gambling bill to be reintroduced in the 107th Congress. Representative Goodlatte believes that the opportunity to pass a bill prohibiting Internet gambling is greater than ever with a Republican Attorney General and a Republican in the White House.⁵⁷ In a 1998 speech to the Southern Republican Leadership Conference, Attorney General John Ashcroft referred to gambling as a "cancer on the soul of our nation."⁵⁸ Goodlatte is confident that the Bush administration will be more supportive of an Internet gambling ban than the Clinton administration.⁵⁹

4. Indian Gaming Regulatory Act

Large scale gambling on Indian reservations traces its origins to a

50. *See id.* at § 2(f)(1)(A)-(C).

51. *See id.* at § 3.

52. *See id.* at § 5.

53. Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (1999) (Bill Summary and Status).

54. Mike Bruner, *Net Gambling Ban Falls Short Again*, at <http://www.casinos-gambling.com/no1.htm> (Aug. 19, 2000).

55. *Id.*

56. *Id.*

57. Tony Batt, *Proponents Push Web Betting Ban*, LAS VEGAS REV. J., Feb. 20, 2001, at 1D, available at http://www.lvrj.com/cgi-bin/printable.cgi?lvrj_home/2001/Feb-20-Tue-2001/business/15481693.html.

58. Tony Batt, *Internet Gambling: Critics Seek Crack Down*, LAS VEGAS REV. J., June 9, 2001, available at http://www.lvrj.com/lvrj_home/2001/Jun-09-Sat-2001/business/16275768.html.

59. Batt, *supra* note 57.

landmark 1987 Supreme Court decision.⁶⁰ “In *California v. Cabazon Band of Mission Indians*, the Supreme Court upheld the right of tribes as sovereign nations to conduct gaming on Indian lands. The Court ruled that states had no authority to regulate gaming on Indian lands, if gaming is permitted for any other purpose.”⁶¹ As a result of the favorable Supreme Court ruling, Congress passed the IGRA in 1988, recognizing Indian gaming rights.⁶² The IGRA faced heavy opposition from large casino cities, specifically Las Vegas and Atlantic City.⁶³ Conversely, states supported the IGRA as a means of establishing minimal control over tribal gaming.⁶⁴ In the end, the IGRA “was a political compromise that pleased neither the states nor the tribes.”⁶⁵

The IGRA divided gaming into three classes. Class I gaming, which is regulated exclusively by the tribes, includes traditional forms of Indian gaming played in connection with tribal ceremonies.⁶⁶ Betting on horse racing at a tribe’s annual powwow qualifies as traditional gaming. Class II gaming includes lotteries, bingo, and nonbanking card games authorized by state law or not explicitly prohibited by state law.⁶⁷ States have no role in the regulation of Class II gaming. Class III gaming includes all forms of gaming that are not Class I or Class II.⁶⁸ This category includes casino games, slot machines, and pari-mutuel wagering. Class III gaming may be conducted on Indian lands only if such activities are located in a state that permits gaming for any purpose by any person, organization, or entity, and if such activities are conducted in conformance with a tribal-state compact entered into by the Indian tribe and the state.⁶⁹

During the first decade of the IGRA, tribal gambling revenues grew more than thirtyfold, from \$212 million in 1988 to \$6.7 billion in 1997.⁷⁰ “As was the IGRA’s intention, gambling revenues have proven to be a very important source of funding for many tribal-governments, providing much-needed improvements to the health, education, and welfare of Native

60. *California v. Cabazon Band of Mission Indians*, 476 U.S. 1168 (1986).

61. Gary C. Anders, *Indian Gaming: Financial and Regulatory Issues*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 98, 99 (1998) (citation omitted).

62. *Id.*

63. *Id.*

64. *Id.*

65. Michael D. Cox, *The Indian Gaming Regulatory Act: An Overview*, 7 ST. THOMAS L. REV. 769, 770 (1995).

66. 25 U.S.C. § 2703(6) (1994).

67. *Id.* § 2703(7).

68. *Id.* § 2703(8).

69. 25 U.S.C. § 2710(d)(1)(B)-(C) (1994).

70. NGISC, *supra* note 2, at 19.

Americans on reservations across the United States.”⁷¹

With the development of the Internet gambling industry, companies that run Internet gambling sites will inevitably form alliances with the tribes. These companies will attempt to capitalize on the loose provisions of the IGRA. For example, alliances could result in Internet lotteries or Internet bingo games in which companies claim sovereignty under the provisions of the IGRA. Attempts by Internet gambling companies to circumvent gambling regulations by working with tribes would negatively affect the economy. Tribes that lack technological sophistication could be victimized by these companies. The result could be a regression of the improvements that tribes experienced after the enactment of the IGRA.

During the floor debate on the IGPA of 1999, Senator Larry Craig of Idaho pursued an amendment that would have allowed various forms of Indian gaming to continue under the current regulatory regime of the IGRA.⁷² “Craig’s amendment would have excluded ‘lawful gaming conducted pursuant to the Indian Gaming Regulatory Act,’” and provided for the federal government to continue to have authority to enforce a violation of the IGPA of 1999 that occurred on tribal lands.⁷³ Craig argued that the IGPA of 1999 disregarded established procedures dealing with tribal gaming, and that it essentially rewrote the IGRA.⁷⁴ After much debate, the Senate voted down the Craig amendment.⁷⁵

C. Cases on Internet Gambling

Due to the infancy of the Internet gambling industry, few cases concerning the topic have been tried. The reasons for the minimal case law on Internet gambling include not only the age of the industry, but also the ambiguity surrounding Internet gambling legislation and jurisdictional issues. This Note will discuss three cases that represent distinct issues within the Internet gambling context. First, the most famous case to date, *United States v. Cohen*⁷⁶ was filed by the federal government under the Wire Act.⁷⁷ Second, Internet gambling litigation raises a wide range of legal issues, including those concerning credit card transactions. An example of this diversity is *Providian v. Haines*,⁷⁸ which included a claim against a

71. *Id.*

72. Lundin, *supra* note 24, at 874.

73. *Id.*

74. *Id.* at 875.

75. *Id.*

76. 260 F.3d 68 (2nd Cir. 2001).

77. *Any Given Sunday*, *supra* note 23.

78. No. CV 980858 (Cal. Super. Ct. Marin Cty.).

credit card company for granting merchant licenses to Internet gambling sites. A third type of litigation that emerged in the Internet gambling arena involves Native Americans. In *Missouri v. Coeur D'Alene Tribe*,⁷⁹ the state sought an injunction to prohibit a tribal group from providing Missouri residents access to the tribal group's Internet gambling site.⁸⁰

1. *United States v. Cohen*

Cohen began in March of 1998, when the United States Attorney from the Southern District of New York filed criminal complaints against twenty-two U.S. citizens.⁸¹ Among those charged for violation of the Wire Act were owners, operators, and managers of offshore Internet gambling operations.⁸² Of the twenty-two individuals charged, only Jay Cohen chose to contest the charges at trial.⁸³ Of the remaining indicted defendants, fifteen pleaded guilty to violating the Wire Act or related misdemeanors, and the other six remain fugitives from the United States.⁸⁴ Two of the fugitives, Haden Ware and Steve Schillinger, are partners with Cohen and continue to operate the firm's Internet gambling operation, World Sports Exchange.⁸⁵

In February of 2000, the Cohen trial took place in New York. Cohen's firm, World Sports Exchange, is based in Antigua, a small island nation 1,300 miles southeast of Miami. Gambling on sports is legal in Antigua. Cohen and his partners established World Sports Exchange in Antigua as a foreign corporation, paid the Antiguan government the requisite licensing fee, and began business.⁸⁶ Cohen believed that by locating offshore, World Sports Exchange was out of the jurisdiction of the United States.⁸⁷ The government argued that World Sports Exchange violated federal laws by enticing Americans to contact World Sports Exchange via phone or the

79. *Missouri ex rel. Nixon v. Couer D'Alene Tribe*, 164 F.3d 1102, 1105 (8th Cir. 1999).

80. Michael P. Kailus, Note, *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 U. ILL. L. REV. 1045, 1054 (1999).

81. Kelly, *supra* note 34, at 150. United States Attorney Mary Jo White noted, "Criminals cannot avoid responsibility for federal crimes by seeking refuge in offshore locations." Mike Brunner, *Americans Stranded in Paradise*, at <http://www.msnbc.com/news/544767.asp?0sp=n6b2#BODY> (Apr. 10, 2001).

82. Kelly, *supra* note 34, at 150.

83. James W. Prado Roberts, *Jail Unlikely to Slow Cyber-Gambling*, ASBURY PARK PRESS, Aug. 13, 2000, at A3.

84. *Id.*

85. *Id.*

86. *Any Given Sunday*, *supra* note 23.

87. *Id.*

Internet to initiate a betting account.⁸⁸ Cohen pleaded that the actions of World Sports Exchange fell within a statutory exception of the Wire Act that permits the transmission of bets from a jurisdiction in which it is legal to place a bet to one in which it is legal to accept a bet.⁸⁹ In other words, Cohen argued that one could lawfully place a bet in New York and lawfully receive a bet in Antigua. The defendant also argued that the Wire Act did not apply to Internet gambling because the Act was passed prior to the advent of the Internet.⁹⁰

Cohen was convicted on one count of conspiracy and seven counts of violating the Wire Act.⁹¹ In August 2000, Cohen was sentenced to twenty-one months in prison and fined \$5,000 by U.S. District Judge Thomas Griesa.⁹² Cohen could have been sentenced to as much as twenty-seven months in prison and fined \$400,000, but Griesa gave the defendant the lightest sentence possible under federal sentencing guidelines.⁹³ The leniency shown by Judge Griesa in his sentencing indicates that he believed the Internet gambling crime to be insignificant compared to crimes with comparable sentences. Cohen believed that the jury was improperly instructed and appealed the verdict.⁹⁴ In addition to determining the fate of the three partners of the World Sports Exchange, the appellate court's ruling will have broad implications on Internet law.⁹⁵

The pending victory for the United States in the Cohen case represents a positive result in its efforts to limit Internet gambling. The outcome of the case will likely affect the growth of the Internet gambling industry. Unless Americans want to remain fugitives in small countries for the remainder of their lives, they will proceed cautiously in developing new Internet gambling ventures. This potential curbing of Internet gambling will benefit the United States economy.

88. *U.S. Attorney's Office Wins First Federal Net Gambling Case*, 4 GAMING INDUSTRY LITIG. REP. 9 (2000).

89. *Id.*

90. *Id.*

91. *Id.*

92. Scheherazade Daneshkhu et al., *Online Betting Operator Jailed: Internet Gambling Decision Could Slow Growing Business*, FIN. TIMES, Aug. 11, 2000, at 8.

93. Roberts, *supra* note 83, at A3.

94. *U.S. Attorney's Office Wins First Federal Net Gambling Case*, 4 GAMING INDUSTRY LITIG. REP. 9 (2000).

95. Bruner, *supra* note 81. The appellate judges are being asked to determine if transactions occur on a Web site's server or on a user's computer. The anticipated ruling could set a precedent not only for jurisdictional questions, but also for online taxation issues. *Id.*

2. *Providian v. Haines*

In 1998, Providian National Bank filed suit against Cynthia Haines, a Californian, to collect credit card debts from Internet gambling.⁹⁶ In 1997, Haines accumulated large debts in blackjack, poker, and other forms of gambling by using a combination of credit cards and Internet gambling sites.⁹⁷ Haines lost more than \$70,000 gambling online with MasterCard and Visa credit cards issued by credit providers such as Providian.⁹⁸ In response to Providian's attempt to collect the gambling debts, Haines initiated a counterclaim arguing that credit card companies were engaging in unfair business practices, and aiding and abetting a crime by granting online gambling sites accounts to process bets for consumers.⁹⁹ Credit card companies typically receive a two to five percent cut from purchases made using their cards.¹⁰⁰ Haines sought an injunction barring credit card companies and their banks from collecting gambling debts on the grounds that gambling is illegal in California.¹⁰¹

Prior to the case of *Providian v. Haines* being fully litigated, a settlement was reached between the two parties. As a result, Providian forgave all of Haines's gambling debts.¹⁰² In addition, nearly \$225,000 in attorney's fees were eliminated from Haines's debts.¹⁰³ Providian's willingness to settle for this large price indicates the strong connection between the Internet gambling industry and credit card companies. Inevitably, U.S. citizens will desire to have their gambling debts relieved by settling with their credit card companies. This lack of consumer responsibility provides incentives for Internet gambling, and negatively affects the U.S. economy.

At the time, *Providian v. Haines* was perceived to be a seminal case with the potential to turn the Internet gambling industry upside down. A victory for Providian would have been a catalyst for greater growth in the Internet gambling industry. It would have sent a message that using a credit

96. Gold, *supra* note 10, at 232.

97. *Id.*

98. *A Settled Suit Leads to Changes in Mastercard's Online Gambling Rules*, CREDIT CARD NEWS, July 15, 2000, at 6.

99. Gold, *supra* note 10, at 232.

100. *Id.* at 235.

101. *Id.* at 232.

102. Chet Bridger, *Playing Without Plastic: Some Banks Are Refusing to Let Customers Use Their Credit Cards on Internet Gambling Sites Because Losses Can Be Legally Unenforceable*, BUFF. NEWS, Aug. 24, 2000, at 1E. A Providian spokesman noted: "We felt it was a good business decision on our part because of the potential conflicts that could arise." *Id.*

103. Gold, *supra* note 10, at 238.

card to gamble online was a legitimate practice. Conversely, a victory for Haines would have dealt a crushing blow to the development of Internet gambling. As one prominent authority on Internet gambling stated: "If you're an Internet casino and the credit card companies refuse to deal with you, then you're in trouble."¹⁰⁴ A Haines victory would have had both economic and criminal effects on credit card companies. If credit card companies had no recourse against individuals who failed to pay debts based on Internet gambling, the companies would certainly stop offering services to Internet gambling operations. Additionally, law enforcement officials could have prosecuted credit card companies that continued to provide a means for fund transfers to individuals participating in Internet gambling.

3. *Missouri v. Coeur D'Alene Tribe*

The issue in *Coeur D'Alene* involved whether a state may prevent a Native American tribe from accepting money from residents of that state via a lottery Internet site. In late 1997, a fourteen-year-old boy opened an Internet gambling account with the Coeur D'Alene Tribe's U.S. Lottery Web site.¹⁰⁵ This was a unique situation in which the Missouri Attorney General personally provided the boy with the identification necessary to establish an Internet account. This undercover operation provided the necessary evidence to file suit in Missouri state court. The suit attempted to enjoin the Coeur D'Alene Tribe and its contractor, UniStar Entertainment, from offering Missouri residents chances in the Tribe's Internet lottery.¹⁰⁶

The tribe removed the case from Missouri state court to federal court, where the complaint was dismissed because the cause of action was preempted by the IGRA. The district court concluded that the IGRA preempts Indian gaming regardless of whether the gaming occurs on Indian lands.¹⁰⁷ The immunity did not extend to UniStar, although the court commented that the issue of whether tribal immunity extends to a nontribal party was unsettled.¹⁰⁸ The Eighth Circuit Court of Appeals eventually reversed the lower court on complex procedural issues, due to an error in

104. Marci McDonald, *Betting the House: Online Gambling Proves Addictive—Even to the Big Casinos*, U.S. NEWS AND WORLD REP., Oct. 16, 2000, at 44 (The cited authority, Joseph Kelly, is a professor of business law at the State University of New York College at Buffalo, and has written numerous articles on Internet gambling).

105. Lundin, *supra* note 24, at 845.

106. *Missouri ex rel. Nixon v. Couer D'Alene Tribe*, 164 F.3d 1102, 1105 (8th Cir. 1999).

107. *Id.*

108. Kelly, *supra* note 34, at 159.

determining that the IGRA preempted all tribal gaming.¹⁰⁹ The Eighth Circuit remanded, directing the lower court to determine whether Internet gambling takes place on tribal lands when bettors use their home computers to access Internet lotteries via computer servers located on tribal lands.¹¹⁰

This brief synopsis of Internet gambling cases demonstrates both the diversity and the ambiguity surrounding Internet gambling. As these initial decisions are rendered, it is inevitable that numerous Internet gambling cases will be introduced. The lawsuits expected to receive the most attention are those brought by disgruntled gamblers against credit card companies. The fact that few Internet gambling cases have been tried makes each decision critically important, as these decisions represent the authority on Internet gambling law.

III. NEGATIVE ECONOMIC CONSEQUENCES OF INTERNET GAMBLING

The recent explosion of Internet gambling poses serious concerns to the U.S. economy. With the U.S. economy slowing significantly after a decade of expansion, the impact of Internet gambling will be detrimental. One effect will be the reduction in tax revenues collected by state and federal governments from legalized gambling operations. The gambling industry in America represents a significant source of tax revenues to the various jurisdictions in which gambling operates. A second area that will be affected by the Internet gambling phenomenon is the consumer credit card industry. Thirdly, Internet gambling harms families, leads to crime, and increases addiction. Although difficult to quantify, these areas of concern will negatively impair the economy.

A. *Reduction in Tax Revenue*

Legal gambling operations in the United States pay millions of dollars in taxes annually to local and federal governments. Without question, these taxes contribute to the overall revenues in the vast majority of states with legalized gambling. "State and local governments in Iowa collected more than \$197 million in taxes and fees from Iowa casinos and racetracks [in 2000]."¹¹¹ The Casino Queen Riverboat in East St. Louis generates between \$10 million and \$12 million annually in tax revenues for the city.¹¹² In

109. *Id.*

110. *Id.*

111. Patrick Strawbridge, *Casinos are Wary of Potential Threats Offshore, Internet-Based Operations Head the List of Competition That Threatens Gambling Establishment Bluffs Casinos' Revenue*, OMAHA WORLD-HERALD, Jan. 28, 2001, at 2r.

112. Kenneth M. Reardon, *Back from the Brink: The East St. Louis Story*, 18 GATEWAY

addition, the riverboat casino created more than 1,200 full-time jobs.¹¹³ “Gaming revenues have enabled the city to make dramatic strides in its quality of life.”¹¹⁴ The willingness of states to legalize certain forms of gambling, such as lotteries, often hinges on revenue shortfalls of their treasuries.¹¹⁵ During the 1980s, sixteen of the twenty-two states with the greatest increase in unemployment created lotteries.¹¹⁶ It is always easier for politicians to support a lottery or a casino riverboat than to propose a tax increase on their constituents.

When Americans participate in Internet gambling, however, no state budget receives a windfall of revenues. The money gambled by Americans on the Internet is done so with companies that pay no taxes in the United States.¹¹⁷ With over \$2 billion gambled on the Internet in 2000, the amount of tax revenues that the United States loses is staggering. Included in this loss of revenues are secondary items purchased when one attends a gambling facility, such as food, souvenirs, and clothing.

An investigation of tax revenue lost to Internet gambling can be optimally displayed by looking at a specific state. For example, this Note explores the effect Internet gambling has on a riverboat casino in Illinois. Gambling riverboats in Illinois are subject to the Illinois Riverboat Gambling Act.¹¹⁸ This law imposes an annual graduated wagering tax on adjusted gross receipts from gambling. Adjusted gross receipts are defined as “gross receipts less winnings paid to wagerers.”¹¹⁹ The graduated tax rate for each riverboat is as follows: up to \$25 million – 15%; \$25 million to \$50 million – 20%; \$50 million to \$75 million – 25%; \$75 million to \$100 million – 30%; in excess of \$100 million – 35%.¹²⁰ Of the projected \$2.2 billion gambled on the Internet in 2000, assume that \$50 million is done so by Illinois residents. Assuming that Internet gambling did not exist and that Illinois residents would have spent the remaining \$50 million gambling legally, \$50 million less is gambled in Illinois as a result of Internet gambling. Now examine a large riverboat casino in the suburbs of Chicago. If this riverboat handles 10% of the dollars gambled in Illinois annually, then the riverboat alone will lose \$5 million in revenues to Internet

HERITAGE 4, 11 (Winter 1997-98).

113. *Id.*

114. *Id.*

115. ROBERT GOODMAN, *THE LUCK BUSINESS: THE DEVASTATING CONSEQUENCES AND BROKEN PROMISES OF AMERICA’S GAMBLING EXPLOSION* 162 (1995).

116. *Id.*

117. Nelson, *supra* note 45, at 21.

118. 230 ILL. COMP. STAT. ANN. 10/1-23 (West 2001).

119. *Id.* 10/4(h).

120. *Id.* 10/13(a).

gambling in a year. With the large riverboat being taxed at 35% for adjusted receipts over \$100 million, the riverboat by itself will pay \$1.75 million less in annual graduated wagering taxes.

The proceeds of the graduated wagering tax in Illinois are to be disbursed as follows: 25% is delegated to the local government where the home dock is located, a small portion goes to the Illinois Gaming Board for expenses, and the remainder goes to the state education assistance fund.¹²¹ This wagering tax does not take into consideration admission taxes and excise taxes on food and beverages. The Illinois Riverboat Gambling Act requires that licensees pay a two dollar admission tax for each person admitted to a gaming cruise.¹²² Of this admission tax, the host county or municipality receives one dollar.¹²³ If one million people board Illinois riverboats in a year, then \$1 million in tax revenues are being provided to local municipalities as a result of legalized gambling.

While any gambler desires to win money, the depression of losing can be somewhat alleviated when the money is being reinvested to improve the economy. This is the case when people lose money in regulated gambling environments. For example, when an individual buys a lottery ticket at a convenience store, a portion of the cost of that ticket will be used to improve education or to build better roads. When an individual plays an online lottery, the proceeds are not reinvested to improve any government projects. Legal gambling operations are permitted to function in the United States when they comply with strict regulations such as accounting procedures. No such procedures exist in the world of Internet gambling, which deprives the United States of millions of dollars annually in tax revenues.

B. Consumer Credit Card Industry

Internet gambling places banks and credit card companies in a precarious position. On the one hand, these institutions can profit greatly by offering credit to individuals to gamble online. Credit card charges for Internet gambling are often posted as cash advances, which carry higher interest rates than ordinary purchases.¹²⁴ The cash advance rate for most credit cards exceeds 20%.¹²⁵ The downside to credit card companies stems from the processing of Internet gambling transactions. Numerous lawsuits are filed by individuals who have lost money gambling online and who

121. *Id.* 10/13(b).

122. *Id.* 10/12(a).

123. *Id.* 10/12(b).

124. Bridger, *supra* note 102, at 1E.

125. *Id.*

refuse to pay their gambling debts. These lawsuits could leave banks unable to collect debts from individuals who partake in Internet gambling.

As a result of the uncertainty surrounding the litigation of Internet gambling issues, many credit card issuers prohibit transactions from Internet gambling sites. Among the credit card companies that has ceased allowing Internet gambling transactions is Delaware-based MBNA. According to a company spokesman, it "began prohibiting transactions from Internet gambling sites . . . 'when it became apparent how the bank's cards were being used.'"¹²⁶ It is expected that other credit card companies will adopt a similar stance to that of MBNA, as the risk of the number of individuals failing to pay their Internet gambling debts increases.

The biggest losers with respect to the use of credit cards in Internet gambling transactions are those who do not gamble online. Regardless of how the litigation evolves in cases of Internet gamblers against credit card companies, the ordinary American loses. If Internet gamblers are successful in having their debts alleviated, non-Internet gamblers will ultimately pay the economic price for their fellow Americans' victory. This price will come in the form of higher fees, charges, and interest rates passed on to all American credit card holders.¹²⁷ Because the number of those in the non-Internet gambling community far outweighs the number of those who gamble online, a vast majority of Americans will experience the negative effects of credit card use in Internet gambling transactions.

Even if credit card companies are successful in litigation against Internet gamblers, Americans will still feel negative effects. Victories for credit card companies would provide credibility to the Internet gambling industry and encourage more people to participate. The result of this certification of the Internet gambling industry would cause more and more people to accumulate large Internet gambling debts. When the factor of gambling addiction is added, inevitably many individuals would assume debts unrecoverable to credit card companies. Once again, higher interest rates and fees will be passed on to non-Internet gamblers as a result of the use of credit cards in Internet gambling transactions.

C. *Miscellaneous Costs to Society*

The societal concerns that led to the intense regulation of traditional forms of gambling do not disappear when dealing with Internet gambling. As Internet gambling invades American households, society is "left to deal

126. *Id.*

127. Gold, *supra* note 10, at 236.

with the crime, bankruptcy, and gambling disorders that may result.”¹²⁸ Among the many problems exacerbated by Internet gambling are gambling addiction and gambling by minors.¹²⁹ Pathological gambling negatively affects not only the gambler, but also the gambler’s family and friends, and society at large. Societal costs of pathological gambling includes the expenditure of unemployment benefits, physical and mental health problems, theft, embezzlement, bankruptcy, suicide, domestic violence, and child abuse and neglect.¹³⁰

Experts predict that “the number of compulsive gamblers could soon quadruple from 5 million to 20 million addicts nationwide.”¹³¹ The primary reason for this anticipated increase in compulsive gambling is the Internet. With the accessibility of the Internet, gamblers do not have to travel to casinos or contact their local bookie to place a bet. Internet gambling is more addictive than other forms of gambling because it combines high-speed, instant gratification with the anonymity of gambling from home.¹³² The temptations that lead to compulsive gambling are as close as one’s computer.¹³³

Despite the severe impact that pathological gambling has on Americans, minimal research exists on the topic.¹³⁴ The research performed on pathological gambling has often been half-hearted. An addiction specialist before the House Committee on Banking and Finance offered the following testimony on pathological gambling:

[O]ur research indicated that we have a growing number of problem and pathological gamblers in America.

We are just beginning to address this problem and calculate its costs. The casino industry is supporting limited research, but, sadly, it has been difficult to get this matter on the radar screen of the major federal funders of research on addictive behaviors In this environment, are we really ready for a potentially exponential increase in gambling activity? The answer should be obvious.¹³⁵

128. Nelson, *supra* note 45.

129. Karadbil, *supra* note 12, at 438.

130. NGISC, *supra* note 2, at 16.

131. Michael Breen, *Experts Foresee Rise in Gambling Addiction*, CHI. SUN-TIMES, Sept. 10, 2000, at 11.

132. Bedell, *supra* note 17. Janet Parshall, spokeswoman for the Family Research Council, noted, “It’s about time Congress acts to curb this dangerous and rapidly expanding activity Online gambling is much more destructive and addictive than other forms of gambling.” *Id.*

133. *See id.*

134. NGISC, *supra* note 2, at 16.

135. *Internet Gambling Funding Prohibition Act: Hearing on H.R. 4419 Before the House Comm. on Banking and Fin. Services*, 106th Cong. (2000) (statement of Richard C. Leone, Nat’l Gambling Impact Study Comm’n).

Compulsive gamblers are responsible for an estimated fifteen percent of the dollars lost in gambling. Beyond this monetary figure, how can society quantify a divorce caused by a gambling addiction or a gambling-induced suicide?¹³⁶

Another troubling aspect of Internet gambling is the potential access to minors. Many minors are adept at playing games online and are especially vulnerable to Internet gambling. Whereas state legislation allows casinos to forbid gambling by minors, "Internet gambling eludes these safeguards."¹³⁷ The development of Internet gambling sites has made wagering even more accessible to minors. In a majority of gambling studies, high school- and college-aged individuals possessed the highest problem rates.¹³⁸ Gambling as a phenomenon among minors is two to four times more common than among adults.¹³⁹ The continued development of Internet gambling enhances this problem.

Internet gambling sites employ different approaches to prevent minors from participating. The majority of Internet gambling sites utilize credit card information to screen minors because credit is not extended to those under the age of majority.¹⁴⁰ Sites that rely on credit card information, however, alert their company to the possibility that minors will steal credit card information from adults. To prevent this problem, the most sophisticated Internet gambling sites employ credit reporting databases to match credit cards and taxpayer identification numbers to verify the true identities of users.¹⁴¹ While the number of sites using the matching system is in the minority, this heightened security is a step in the right direction to limit Internet gambling. Regardless, the dangerous combination of minors and gambling is enhanced by the accessibility of Internet gambling sites.

IV. OPTIONS AND BENEFITS OF CURBING INTERNET GAMBLING

After analyzing the statutory landscape of Internet gambling and assessing its negative economic consequences, the question that remains is what can be done to limit Internet gambling. One option is to reintroduce

136. NGISC, *supra* note 2, at 18.

137. Keller, *supra* note 1, at 1591-92.

138. Guy Gugliotta, *Young Gamblers Flocking to the Internet: As Sites Proliferate, The First Online Generation Grows Vulnerable to Addiction*, WASH. POST, Jan. 28, 2001, at A2 (quoting from an advisory on Internet gambling and addiction issued by the American Psychiatric Association).

139. *Id.* (quoting Jeffery L. Derevensky, a youth gambling specialist at McGill University, Montreal). Studies over the past decade show an average of sixty-six percent of American children ages twelve to seventeen gambled for money in the previous year. *Id.*

140. Karadbil, *supra* note 12, at 440.

141. *Id.*

the IGPA. In order for this option to be viable, legislators must not target individual bettors, while limiting exemptions to special interest groups. A second option to limit Internet gambling is through enhanced enforcement mechanisms against credit card providers and money transfer agents. The Internet gambling industry is dependent on transactions from money transfer agents; thus, discouraging transactions will limit Internet gambling. A third option is enhanced enforcement mechanisms against ISPs. Without the ISPs, Internet gambling companies have no means of reaching their gambling audience. Encouraging ISPs to block Internet gambling sites will benefit the economy. A fourth option to limit Internet gambling is to reduce tax rates on winnings from regulated gambling environments. Lower tax rates on gambling winnings will encourage individuals to partake in gambling activities away from the Internet.

A. *Reintroduction of the IGPA*

The continued growth of Internet gambling expedites the need for federal legislation in the industry. Certain provisions of the Wire Act need to be updated. Congress made progress in the 105th and 106th sessions toward enacting federal law prohibiting Internet gambling. On both occasions, however, special interest groups and lobbyists prevented passage of any legislation. Today, more than ever, the United States needs federal legislation limiting the growth of the Internet gambling industry. As the National Gambling Impact Study Commission recommended, federal governments are best equipped to regulate Internet gambling.¹⁴²

Congress's inability to pass federal legislation prohibiting Internet gambling is most visible with respect to traditional casinos. The traditional casinos originally endorsed a complete ban on Internet gambling because they saw the Internet gambling industry as a threat for gaming dollars. A spokesman for MGM Mirage noted that the casino industry supported the ban in the past because solutions to security and authentication problems were too far down the road.¹⁴³ However, the hard-line stance by traditional casinos against the Internet gambling industry is beginning to dissolve. Currently the major casino operators desire to be prepared to enter the Internet gambling market in the event legislators fail to outlaw Internet gambling. One gambling company executive stated that his company established an Internet gambling site to be prepared to compete if

142. See NGISC, *supra* note 2, at 29.

143. Dretzka, *supra* note 46, at C1 (referring to Alan Feldman, spokesman for MGM Mirage). Feldman further added that in the past, Internet technology was laughably incapable of combating hackers and underage players. *Id.*

regulatory technology became available.¹⁴⁴ Legislators in Nevada and New Jersey, two of the biggest gambling states, have introduced bills that would allow traditional casino operators to conduct Internet gambling.¹⁴⁵ In addition, the major casino companies in the United States have developed “for-fun” sites that allow gamblers to play for prizes.¹⁴⁶ If Congress fails to pass an Internet gambling prohibition bill soon, it will only be a matter of time before casino companies electronically distribute their products for money.

The key to passing federal legislation on Internet gambling rests with the willingness of legislators and various interest groups to compromise. The IGPA of 1997 failed because it targeted the individual bettor. After the IGPA of 1999 abandoned the individual bettor provisions, it still included too many exemptions to special interest groups.¹⁴⁷ In order to pass Internet gambling legislation in the current session, Congress must propose a bill that does not target individual bettors, while at the same time limiting the number of exemptions to special interest groups. For example, exemptions on state lotteries and fantasy sports contests that existed in the IGPA of 1999 need to be removed before a bill on Internet gambling can realistically be expected to pass.

B. Enforcement Mechanisms Against Credit Card Providers and Money Transfer Agents

An estimated ninety-five percent of Internet gamblers worldwide make their wagers with credit cards.¹⁴⁸ Without question, credit cards are vital to the Internet gambling industry. It would seem logical that limiting the use of credit cards in Internet gambling would decimate the industry. Representative Jim Leach believes the number of personal bankruptcies will greatly increase if credit card companies continue to allow gamblers to use their products to pay for Internet gambling.¹⁴⁹ Leach introduced a bill in

144. Tony Batt, *Entry Into Internet Gaming Should be Delayed, Casino Leaders Say*, LAS VEGAS REV.-J., MAY 25, 2001. Park Place Entertainment CEO Tom Gallagher noted that his company also developed its gambling site out of an obligation to shareholders if Internet gambling becomes legal. *Id.*

145. Mike Bruner, *Online Gambling Goes Global*, at <http://www.msnbc.com/news/544764.asp?osp=n6b1z1> (Apr. 10, 2001).

146. *Id.*

147. Michael E. Hammond, *Internet Gambling Regulation*, at <http://www.geocities.com/mehamm0/netgambling.htm> (Apr. 17, 2000).

148. Kevin Ferguson, *Wells Fargo Bars Use of ATM, Credit Cards for Online Gambling*, LAS VEGAS REV. J., Dec. 15, 2000, at 3E (quoting Sebastian Sinclair, an Internet gambling analyst for New York-based Christiansen Capital Advisors).

149. Tony Batt, *House Panel: Official Says Credit Card Ban Feasible*, LAS VEGAS REV. J., July 13, 2001, at 1D.

2001 “that would ban the use of credit cards . . . to pay for Internet gambling.”¹⁵⁰ He believed that “[t]he banning of major credit cards may take a thirty percent bite out of the Internet gambling industry in the short run.”¹⁵¹

One option to impede the use of credit cards and money transfers in Internet gambling would be to enact legislation prohibiting wire transfers to known Internet gambling sites. A problem with this proposal is that with the fluidity of the Internet, alternative forms of payment, such as digital cash, could likely be utilized. Cardholders could easily circumvent the law by buying “electronic cash” at a site such as PayPal.¹⁵² PayPal is described as “an e-commerce provider that allows individuals to establish a PayPal account by depositing funds.”¹⁵³ Once the account is established, individuals can purchase goods from any site that uses the PayPal system, including Internet gambling sites.¹⁵⁴ Additionally, credit card companies believe a ban on credit card use in Internet gambling transactions would place an unreasonable burden on themselves to enforce federal law.¹⁵⁵ Nonetheless, legislation that hinders an individual’s ability to use a credit card for Internet gambling transactions would clearly affect the industry in the near term. At a time when the laws surrounding Internet gambling are ambiguous, any action that would limit the growth of the industry would be beneficial to the economy.

One final possibility would be to enact legislation that made any credit card debt incurred while gambling online unrecoverable. While this type of legislation would not promote consumer responsibility, it would crush the Internet gambling industry. If banks and credit card companies had no avenue to enforce debt collection from Internet gamblers, they would inevitably refuse transactions with Internet gambling sites.

C. Enforcement Mechanisms Against ISPs

The failure of the IGPA of 1999 resulted in large part because of concerns that a ban on Internet gambling would unduly burden ISPs.¹⁵⁶ One

150. *Id.*

151. Ferguson, *supra* note 148.

152. *Experts Protest Online Gambling Bills*, at <http://stacks.msnbc.com/news/599708.asp> (July 12, 2001).

153. Sinclair Statement, *supra* note 20.

154. *Id.*

155. *Id.*; see also *Don’t Ban Online Gambling, U.S. Congress Told*, *ECONOMIC TIMES*, July 14, 2001, available at <http://economictimes.com/140701/14tech14.htm>. The head lobbyist for Visa believes the responsibility for illegal acts should be on the illegal actor and not on the credit card companies. *Id.*

156. Mike Brunner, *supra* note 54.

provision of the IGPA of 1999 attempted to deter Internet gambling sites by impeding their access to ISPs in the United States.¹⁵⁷ Under that provision, if a state or federal law enforcement agency notifies an ISP of an Internet gambling site, the provider must remove the site within twenty-four hours.¹⁵⁸ This proposal met strong opposition by those who felt it was unfair to make ISPs the policemen of all Internet gambling. An additional concern is the lack of liability protection for ISPs who are implicated for breaking the law even if they are unaware of the illegal activities occurring over their networks.

Internet gambling relies on ISPs to provide the connection between gambling sites and gamblers. One option to limit Internet gambling is to enact legislation that provides ISPs with a limited liability provision. ISPs cannot reasonably be expected to eliminate all Internet gambling sites upon the request of law enforcement officials. In contrast to traditional casinos, simply "chaining the doors" cannot shut down Internet gambling sites.¹⁵⁹ Internet gambling sites have the ability to relocate by changing their addresses. This versatility makes it unfair to hold ISPs completely liable for shutting down Internet gambling sites. A second option that could be utilized to encourage ISPs to limit the growth of Internet gambling would be to provide ISPs with benefits and incentives for each site they block.

D. Tax Relief on Gambling Winnings

Gamblers who are fortunate enough to win money are required to report those winnings to the Internal Revenue Service. The rare individuals who win money gambling online, however, are unlikely to report any taxable winnings. The fact that an individual who wins a state lottery must pay taxes on the winnings, while an individual who wins an Internet lottery does not have to pay taxes on the winnings, is inequitable. One possibility to reduce this inequity would be to reduce the tax rate on gambling winnings. The desires of such a plan would be to attract more individuals to gamble in a regulated environment. A proposal that promotes any type of gambling will be met with violent opposition from certain interest groups. However, the reality persists that people are going to gamble somewhere, so it may as well be in a legalized form rather than on the Internet.

The reduction in the tax rate for gambling winnings might appear to produce less revenue for governments. This plan would only be feasible if

157. Marilyn Geewax, *Internet Gambling: Sites Gamble on Legality*, ATLANTA J. AND CONST., Jan. 28, 2001, at 5D.

158. *Id.*

159. Joel Michael Schwarz, *The Internet Gambling Fallacy Craps Out*, 14 BERKELEY TECH. L.J. 1021, 1023 (1999).

enough Internet gamblers could be converted back to the traditional gambling environment. This influx in gaming dollars to the traditional gambling arena would have to compensate for the reduced revenues provided from taxable winnings. The theory behind such a plan is akin to one used for investors with capital gains tax rates. Individuals who hold securities for a short duration must pay higher taxes on their earnings than individuals who hold their securities for over a year. Goals of the capital gains plan can include encouraging investors to hold their securities for longer periods and reducing the volatility of the capital markets. The goal of the lowered tax rates on gambling winnings would be to encourage individuals not to gamble on the Internet.

V. CONCLUSION

As this Note demonstrates, the Internet gambling industry yields a negative impact on the U.S. economy. Internet gambling deprives state and local governments of valuable tax revenues required to maintain services. Internet gambling also forces consumers to pay higher fees and interest rates as a result of uncollectable gambling debts. Finally, Internet gambling adversely affects our society in ways that cannot easily be quantified such as addiction, pathological behavior, and family disintegration.

In order to limit the negative effects of Internet gambling on our economy, legislators need to take aggressive measures. Chief among these measures is to reintroduce the IGPA during the 107th Congressional session. Because of the ambiguity surrounding legal aspects of Internet gambling, federal legislation is urgently needed to clarify many issues. In addition, provisions against credit card providers and ISPs should be enacted to limit Internet gambling. The negative effects of Internet gambling are already being perceived by the U.S. economy. If lawmakers do not aggressively combat the growth of Internet gambling, the effects on our economy will be damaging.

