



GGGS

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4th November, 1998

The Commissioners
Gambling inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Sirs,

I refer to the invitation to make a written submission to the Commissioners conducting the inquiry into Australia's gambling industries, as outlined in the Issues Paper of September 1998.

I am a Committee member of a recently incorporated association called the Online Gambling Association of Australia (OLGAA), which is comprised of a number of private individuals and companies who/that are involved in the gambling industry as suppliers of equipment and systems or gaming services of one kind or another, or as licensed gaming operators. The Association was incorporated on 15th September 1998 following an inaugural meeting of interested parties held in Sydney on 24th August 1998.

In respect to Online Gambling, the parties were generally concerned that the opinions and views held at many levels of the gambling industry should be canvassed, discussed and, if necessary, made known to Governments. It was determined that a forum such as OLGAA would be useful for the purpose and consequently the Association was formed and incorporated. Subsequent to the inaugural meeting, a Steering Committee of 8 persons was appointed to plan the promotion of the objectives of the Association, which are: -

- Lobby Government for consistency and clarity of legislation, regulations and standards.
- Establish, maintain and update codes of conduct for industry participants.
- Identify and resolve matters of concern to the community, Government and industry.
- Support the community in researching, assessing, identifying and implementing responsible practices.
- Provide information relating to the implications of technology for the gaming industry to participants, regulators, and other interested parties.

The Mission of the Association is to "promote Australia as the world leader in responsible and regulated online gambling"

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The Association members are fairly well briefed on the various initiatives that have been taken by State Governments in regard to online gambling and interactive gambling.

We are, for example, well aware of the National model that has been developed for interactive gambling, which has been used to put legislation into place in Queensland and the ACT. We are generally supportive of the thrust of this legislation and the accompanying regulations and particularly so in respect to such issues as the prohibition of gaming by minors and the protective measures in regard to problem gamblers.

Interestingly, the Northern Territory and Tasmania have not followed the National model for reasons that are not entirely clear to the Association at this point in time. As a consequence, the national approach has fractured somewhat.

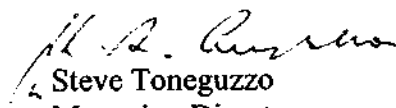
One thing is clear. Australian gaming enjoys high esteem in world terms. It is generally well regulated; game integrity is in place; the probity of the licensed operators and those associated is accepted; and fair player returns prevail. As an association we want to build on that base.

As an example of the standard of communication that is available to OLGAA members and for your consideration, I attach a copy of three recent papers. The first is a paper by me as Managing Director of Global Gaming Services that I presented to the Parliament of South Australia, Social Development Committee, in September 1997, entitled 'Internet Gaming'. The second by the same author, entitled 'Controlling the Technology or Controlling the Games', was presented at an Australian Institute of Criminology conference in May 1998. The third is a paper that another Committee member of the Association, Mr. Jamie Nettleton of Norton Smith & Co., Commercial Lawyers, gave to an International Bar Association Committee in Canada recently, which is entitled 'Regulation of Internet Gaming in Australia'.

There are a number of items listed in your Issues Paper that warrant attention but for the moment, I have been asked by the OLGAA Committee to signal to the Commission the existence of OLGAA and advise you we will be represented at the public hearings to be held in Sydney on Monday 16th November.

At this stage, it is thought that the representation will consist of Mr Nettleton, Mr Jon Moss of Access Systems Pty Ltd (Access have submitted separately to the Commission) and me. On that day, we will present ourselves to Mr Ross Wilson and hopefully arrange an informal meeting with him on the following day to further explain the aims of OLGAA.

Yours faithfully


Steve Toneguzzo
Managing Director

INTERNET GAMING

EVIDENCE FOR

PARLIAMENT OF SOUTH AUSTRALIA,

SOCIAL DEVELOPMENT COMMITTEE.

Presented by S. J. Toneguzzo

10 September, 1997.

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1. OVERVIEW

During the past hundred years gaming has become increasingly accessible to the general public. Gaming has progressed from being illegal, to being legal in remote locations (c.f. Las Vegas), to being legal in the urban casino, the local pub, etc. In all cases the presiding regulatory authority has had the power to control all forms of gambling in their jurisdiction.

Now, Internet gaming brings gambling off the street and into your lounge-room...your office. Do Regulator's still have control? Does anyone?

An outline of the evidence I wish to present to you today follows:

- Within the context of current (venue) gambling, explore the concept that it is not the technology, but the control of the technology (coupled with a general awareness of the technology), that can make the difference between gambling for harmless entertainment and gambling for financial ruin.
- Define what the Internet is, briefly looking at general issues such as access, privacy and financial transactions.
- Define what gambling on the Internet means. How does one cyber-gamble?
- Within the context of regulatory control, explore the differences between venue gambling and Internet gambling.
- Discuss attempts at regulation of Internet gaming and major obstacles to regulation of the Internet. Including an opinion on the Australian *Draft Regulatory Control Model for New Forms of Interactive Home Gambling*
- Discuss major obstacles to viable Internet gambling (for the moment at least).
- Paint a picture of how gambling on the Internet might appear in the not too distant future.
- Conclude by presenting a worst case scenario of a self-destructive future where Internet based gambling is the catalyst for a deregulated gaming industry, wherein uncontrolled cannibalisation between market sectors and jurisdictions might prevail. Suggest an action plan.

2. CONTROL OF GAMBLING TECHNOLOGY

We shall commence this journey by exploring the concept that it is not the technology, but the control of the technology (coupled with a general awareness of the technology), that can make the difference between gambling for harmless entertainment and gambling for financial ruin.

2.1 What Is Gambling?

Gambling in all forms has the common characteristics that a player places a wager on an event involving chance, to potentially win a prize. The prize schedule is contrived in such a way that statistically there is a house advantage on the game.

Without all three elements of wager, chance and prize, the activity is not gambling.

A **prize** is anything of value. The simple test is whether an ordinary person would believe that the item has value, however small.

Chance is harder to define. At one end of the spectrum is pure skill, while at the other end is pure chance. A game of skill that contains even a slight element of chance, could be considered to be a game of chance.

A **wager** is what the person must pay to enter the game. Like a prize, a wager must be something of intrinsic value, usually money. It is generally accepted that a wager is a direct payment, however incidental expenses or inconvenience could be a consideration. For example, the cost of obtaining a pizza that provides me with a \$1 pokie voucher.

2.2 Government Policy on Gambling

The introduction of gambling remains a contentious issue with essentially two principal models: Eradication and Decriminalisation. Philosophical, theological, social, and economic arguments are typically offered to support each public policy position.

2.2.1 Eradication

The principal arguments for Eradication are that gaming is morally wrong in itself, and that it has an attendant criminal activity that outweighs any potential benefit derived from gaming revenue.

Most of the world's religions do not tolerate gambling. Most Muslim, Hindu, and Buddhist countries prohibit most, if not all, forms of gambling. The Christian religion is divided on the issue of gambling. Therefore, religion as the basis for prohibitive public policy on gambling is less evident in Christian countries than countries with another predominate religion.

In addition to theological or moral arguments, governments may take the view that gambling produces no public good, leads to problem gambling, diverts money from productive businesses, lowers the standard of living, and contributes to crime.

2.2.2 Decriminalisation

Two principal arguments for decriminalisation are the individual's rights to choose whether or not to gamble and the benefits to the community that will result from revenue derived from regulated gaming.

If one considers that gambling is an inevitable vice, then it can be argued that people are going to gamble even if it is illegal, and that government should permit gambling to:

1. prevent excessive gambling,
2. remove the criminal control, and
3. ensure that the operators provide fair and honest games.

Gambling is often seen as harmful only to the person who engages in it; that is, it is a victimless crime (as opposed to rape, murder, etc). Regulations can control the gambling (predominantly through technology assisted gambling) to assure that the individual's behaviour does not result in the person's financial ruin. The regulations can also include strategies to reduce or eliminate participation by problem gamblers (such as adequately funded financial or psychological counselling services).

So how do the Regulations ensure that technology assisted gambling is structured to minimise the chance of a person's financial ruin. To structure gaming primarily for entertainment?

2.3 Control

It is suggested that in Australia and New Zealand, gaming is deemed socially acceptable so long as it is contained to certain venues, does not result in criminal activity, either directly or indirectly and that the social cost does not outweigh the benefits derived from revenue.

Consequently, considerable research and planning to the control the industry, the sites, the people, and the gaming activity is generally undertaken by government prior to implementation.

A relationship of mutual causality exists between technology and society. This complex relationship leads to the creation of immediate or first order effects, and higher order effects. For example, if the legislation is structured such that the implementation of gaming technology regulates an individual's utility function (that is, the amount of money an individual may risk), the first order effect is that machine revenue, consequently taxation, is not maximised. However, if revenue from gaming taxation is maximised, a second order effect may be an escalation in financial difficulties experienced by some gambling members of the community. Which in turn may have a third order effect of a higher crime rate and/or increased costs for community welfare services. The net tangible/intangible benefits may therefore be less than the expectation when only first order effects are a variable in the equation.

To 'control' an individual's utility function, one must ultimately restrict the quantity of money that may be wagered on a given device in a given period of time. In achieving this goal, there are a number of factors which must be considered, such as a high percentage payback to the patrons, low wagers, relatively low prizes and NO credit betting.

Government sets policy which is translated into technical requirements for gaming equipment. Gaming equipment is then designed and built by gaming companies in accordance with the standards. The equipment is not permitted to be sold or operated in a jurisdiction unless the equipment has been tested and certified as complying with the published standards. Once approved and operational, the gaming equipment must further be operated within an environment of government approved internal controls and operating procedures.

I make the assertion that it is NOT the gaming technology, but the CONTROL of the technology which can be the difference between entertainment and financial devastation.

Let us now look briefly, within the context of poker machine gaming, at how some key elements of control can make the difference. But first let me pose the question: "Are gamblers buying a chance to win big, or are they buying time?"

2.3.1 Percentage pay-back to players, or percentage return

The first technology aspect for control consideration is the percentage return of the poker machine. That is, the machine must have a theoretical and continuing actual return to the public not less than, a prescribed percentage of wager. In South Australia, the minimum return figure for poker machines is 85%. The South Australian Liquor Licensing Commission approves no game for sale or use unless it is independently confirmed that the theoretical return for a game is not less than 85%.

For games of pure chance, such as Keno and Reel games (in general), the return calculations are relatively straightforward and no variability exists. For games of chance and application of knowledge of game rules, such as Blackjack and Draw Poker, however, the expected player return calculations are based on an assumed player strategy. If the player plays outside the bounds of reasonable behaviour (eg. discards a Royal Flush in Drawcard) then the actual return for such players will vary from the theoretical return.

Now, if we assume that (except for instances of large wins) a patron recycles their winnings, then it is suggested that the time duration for a patron to spend a given quantity of money is directly proportional to the percentage return as this influences the amount of money paid back to the player and hence the additional number of games they may play. The time duration for the play of a single game is constituted by the duration of machine controlled game functions and the rate at which patrons initiate and make determinations pertaining to games.

What this effectively means is that the greater the percentage return, the greater the theoretical turnover, which implies a greater number of games and therefore a greater period of play (given an initial wager) resulting in a longer stay at a machine.

The "Theoretical Return" is the return calculated from mathematical theory.

Whilst the "continuing actual return" is the return realised from actual game play. In a game of chance, given a large enough number of games, the actual return will converge to the theoretical return.

So how do regulators ensure a game is a game of chance? The answer is to not approve a game for sale or use unless it has been tested and proven to be based on a random selection process.

2.3.2 Random Selection Process

All electronic poker machine games in the Australian and New Zealand markets are based on an effective implementation of a random number generator. That is, the player has an equally likely chance of obtaining a particular combination for EACH and EVERY game played on a machine. Pokies in this country ARE fair.

However, being based on a truly random process, there is an associated variation (or standard deviation) with each game. That is, in a given period of play a prize may occur multiple times, it may not occur at all. The game may have periods where the return is high, and conversely where the return is low.

Consequently, due to the random nature of a game, simply having a high percentage return will not, in practice, always return the prescribed minimum percentage of wagers (e.g. 85%) in the relatively short time a patron is present at a machine. Some will win large amounts, others will collect nothing. Though on average, patrons will be seen to obtain 'value for money' and the social impact through rapid loss of monies by the patron is minimised. A patron who plays to make a profit rather than for entertainment, should stop playing if and when a small profit has been made as they will, statistically, always lose 100 – Return Percentage of monies wagered.

The conclusion one reaches is that a high percentage return alone does not provide sufficient protection to the patron, so Government imposes requirements on the prize scale and the theoretical probability of individual winning combinations occurring.

2.3.3 Prize Scales

Government requirements ensure that prizes are contrived such that a low probability event pays a high prize and a high probability event pays a low prize.

Requirements also ensure that game instructions appearing on prize scales are fair and not misleading and that psychological manipulation techniques are not employed by game manufacturers. To my knowledge, such techniques have never been used in this country, however there are reported cases of techniques such as the "near miss" technique being used in the United States. This technique ensures that a losing combination will line up symbols giving the player the impression they JUST missed out on the jackpot. I understand this technique is now outlawed.

Still on the topic of gambling psychology, I believe the psychologist, B.F. Skinner conducted an experiment with Rats, whereby if the Rat pressed a button once it would obtain a good helping of food. The number of button presses changed, but always to a constant number (3, 6, 2, etc) and always with a good helping of food. Then the number of button presses required before a food

parcel was delivered became random, and the food parcel just enough to keep the rat hungry. The rat kept pressing the button and eventually died of exhaustion. Such positive reinforcement may be applied to the design of gambling schemes. However, under existing government requirements, the application of this principal is regulated.

One must be careful not to over-regulate, so requirements in this regard must be structured to ensure that the excitement of the "big win" is not lost whilst at the same time retaining the patron's interest and minimising the financial impact on any single player by offering small wins with a reasonably frequent occurrence.

2.3.4 Wagers

Limiting the size of wagers and the manner in which wagers are placed, can play an important role in controlling the financial impact on a individual.

Needless to say, the time required to spend a fixed quantity of money decreases with the increased wager. Ceilings may be placed on wagers.

The issue of how a wager is made is also significant.

With both coins and notes, a patron is required to make a physical effort to feed the machine, an effort which involves real money. It is tangible, the patron can feel and see the money when they have it and are left with an empty wallet when it is spent. It is suggested that the implication of using real money to wager is that; because the presence and absence thereof is tangible, the possibility of a patron continually wagering more and more is reduced.

Further, a conscious effort must be made to obtain more money, though it should be noted that no amount of control over a gaming machine will prevent a patron approaching an Automatic Teller Machine (ATM) and making a withdrawal for the purposes of gambling. Hence, the greater the remoteness of the ATM from a gaming area the lesser the chance that the patron will return to wager more money, as it is suggested that during the elapsed time a re-consideration of exactly what the patron was in the process of undertaking would be constituted.

Using a player card to go into debt or utilising a credit card is NOT advisable due to the possible social impact. It appears that certain members of the population have difficulty equating virtual concepts to "real-life". This observation should not be exploited by gaming technology and indeed, Credit betting is illegal in Australia.

It is suggested that patrons play the machines until a threshold of losing is reached, or a set period of time elapses. That is, most people will play until they have spent their money (unless, perhaps, a jackpot occurs), or until the self-imposed time limit they have set themselves expires.

2.3.5 Presentation of gaming

As abhorrent as this sounds, subliminal messages (messages that target the subconscious) hidden in game graphic screens or embedded in background music and sounds are tested for and completely illegal.

2.3.6 Enforcing the Controls

I trust I have illustrated some areas where a gambling machine and a gaming/entertainment device can be differentiated by technological requirements imposed by a Regulator. That these requirements can regulate an individual's utility function by limiting the financial risk in which a player may engage and by preventing manipulative techniques being employed. Thus, notwithstanding security, reliability, safety and many other aspects not covered here today, I argue there is an unquestionable need for regulatory requirements to be imposed upon gaming devices. I ask you to bear this in mind as we explore Internet gaming, because all of these criteria have the potential to be defied.

3. WHAT IS THE INTERNET?

The Internet is a global computer network. Its complex, anarchic structure defies regulation and the influence of governing bodies. The World Wide Web is a set of software applications that run on computers connected to the Internet. The Internet facilitates a repository, practically encapsulating all human knowledge. It is the beginning of an unprecedented social change, where one may exist isolated in a virtual world, every person is a number, cash becomes obsolete, and ultimate knowledge is available at the press of a button. Some consider it to be a blessing, others a grand conspiracy (referring to the Biblical book of Revelations and the apocalypse), in any event we are truly at the dawn of a New World order.

The concept for the Internet started with a few Universities in the United States linking their computers, back in the 60s. Today millions of computers ranging from the home PC to networks controlling banks, stock exchanges, rail, telephone, electricity, and military are on the Internet.

The typical home user must go through an Internet service provider to connect to the Internet. The home user's computer will direct its modem to dial up the local service provider, by making a call which is routed to the telephone exchange.

The telephone call is then sent to the service provider's number, which, if they are not too busy, will answer the telephone call. At this point, the person's computer, through its modem, communicates with the service provider's computer, through one of its modems.

After the service provider receives the data from the home user containing the user's name and password, it will verify that the person is a paid subscriber. Once verified, the home user's computer is then logged on to the service provider's computer. The user must then give instructions showing which computer within the Internet that it wants to communicate with. This computer is called a host.

The address instructions are in the form of a Universal Resource Locator (URL), which is an address to allow proper travel through the Internet. Every document and other media accessible over the Internet have a distinct URL.

Sound complicated? Well it is not. Today, you buy a computer, and someone installs it. You turn it on. You click on the "Internet Symbol" on the screen. Your computer does the dialling and password verification for you. Your service provider has a default URL, so upon being connected to the Internet, your home computer will automatically connect with a host computer. The *Home Page* you see generally has a button that says "Search". You click on this button. You type the word "Casino" or "Lotto" or "Sportsbook" or "Gambling", and a list of possible Internet Gambling Sites are displayed as a result. All you need to then do is click on the one you want and your there.

Now let us briefly explore some Internet issues that are related to Gambling.

3.1 Market Potential

The January 1997 edition of *Spectrum*, the magazine of the Institute of Electrical and Electronic Engineers, an International technical publication, states that the WWW is growing exponentially: from an estimated 130 host Web sites in June 1993, to 230 000 in June 1996. One expects therefore that the June '97 figure would probably be in excess of 600 000.

Three quotes from the February 1997 edition of *Spectrum*:

1. "Three years from now 100 million people in the United States will have direct Internet access." I'll add that global predictions are in the order of 1 billion people.
2. "Already, we have about US \$45 billion moving through electronic commerce."
3. "This year, the venture capital industry will raise US\$4.8 billion in new funds and 60% of this will go into computer software and Internet start-ups."

A widely used Internet software product is a software package called *Netscape*TM. The company "Netscape" started in 1994 with a \$US4 million investment. In August 1995, that company was worth around \$US1 billion. On Friday 11 August, 1995 (approximately 15 months after start-up) the Herald Sun Newspaper reported that Netscape set records when it doubled its current value on its first day of trading on Wall Street to become a \$US2 billion company!

As for the Internet Gaming market, it could be a billion dollar industry if only 1% of current gaming turnover were directed there. For example, the Australian gambling turnover is reported to exceed 60 billion Australian dollars annually, while the United States gambling turnover is reported to exceed half a Trillion, or 500 billion US dollars annually!

The U.S. Treasury is reported to estimate Internet gambling to be a US\$50 billion industry by the year 2000.

There is big money at stake here, but in what currency; Dollars, Pounds, Yen, or ecash?

3.2 Electronic Cash

*Ecash*TM is the first peer-to-peer payment system for the Internet provided by "DigiCash" operating "The First Digital Bank". Other similar schemes are under investigation, however of significance, The World Wide Web Consortium (W3C) and CommerceNet on October 15, 1996 announced the specifications for Joint Electronic Payments Initiative (JEPI) were complete. Companies involved include Microsoft, IBM, Digital, Xerox, CyberCash, many international Banks and other industry leaders. The protocols make the payment negotiations automatic for Internet users.

Electronic cash is in essence a global currency that defies the law of a given country. Anyone who runs the ecash software can both accept and make payments from any other Internet user anywhere in the world. The software is free and no special computer hardware is required for use

on the Internet. However, a smartcard (computer, and optional transmitter, in a card) will be required for conducting transactions outside the realm of the Internet (e.g. on a toll road).

To quote from an article in the February, '97 issue of Spectrum magazine: "...e-money will threaten every major bank, upsetting the balance of power between financial institutions, retailers and consumers. It will hobble governments as it undercuts their ability to control the flow of money with monetary policy." The reason for this being essentially that, "...money' and 'information' are one in the same thing. If we can store, forward and manipulate information – and we do every day – we can do the same thing with money. Combine that with the awesome future power of the Internet, which in a few years will be available to 30% of U.S. homes, and computers, networks, and money will begin to converge, starting the process of undermining the financial status quo...The existing bank model is 30years out of date and obsolete. A bank today needs no branches, no employees and perhaps no ATMs – just a series of computers with connections to the world. Such a bank would dispense information, lend e-money and move data".

The article goes on to say that: "...Regulatory barriers are going to fall because technology itself makes them obsolete".

If this is what the money industry is predicting, and gaming is all about money, one wonders about the implications for wagering, deposit of winnings and taxation.

3.3 Internet and Crime

Black markets, extortion, bribes, money laundering, counterfeiting and tax evasion all possible from your lounge room, through the use of untraceable electronic currency? Sure cash, is largely untraceable so why should e-cash be any different. Well, at least with real cash it is bulky, there are transactional delays, and through serial numbers it may be traceable.

For example, if a criminal wants to launder their illicit money there is no need to convert cash into chips and then into a casino cheque to take out of the country (bearing in mind the risk associated with the security present at a casino and the audit requirement of the Cash Transactions Reporting Act, 1988.). Nor do they need to operate a "profitable" laundromat, amusement parlour or other cash business. In fact no laundering may be required because ecash can be anonymously transferred from an Australian account to an offshore account, or carried out of the country on a computer disk or other electronic media storage device.

In the U.S., *FraudNet* has been established to monitor, report and prevent online fraud. The statistics four months after starting are that of the 380 fraud reports per day handled by the Center 30 (or 1 out of 12), are Internet-related. The centre predicts that the most serious abuse of the Internet will occur in the gambling sector and that Organised Crime may play a significant role in these ventures, especially in the area of money laundering.

Stanley E. Morris, director of the Financial Crimes Enforcement Network (FinCEN), a branch of the U.S. Treasury recognises the potential vulnerabilities of Internet commerce and so has been working closely with developers of advanced electronic payment systems and law enforcement

agencies to take a proactive approach to regulation. He states that, "Too often, the government has attempted to thwart potential threats by imposing a regulatory burden that does not reflect the true nature or business practices of the industries affected. We cannot make the same mistakes with cyberpayment systems. The technology is developing too rapidly and the potential efficiencies and other benefits too important....Our goal is to inoculate these new systems against crime and misuse to the greatest extent possible, and to permit their healthy growth into the next century".

A sensible philosophy that recognises the need for industry participation and should well be applied to any Australian Regulator's consideration of the regulation of the Internet. This philosophy is further reinforced in a letter from the Internet Society of Australia to the ATO Electronic Commerce Project, wherein it is stated that: "To have any reasonable hope of producing useable, practicable and effective legislation covering the online communities of the world, the legislators must be familiar with those communities...To the extent that the Internet and similar networks are global rather than local, clearly corroborative efforts are likely to be more effective than isolated regional efforts.

3.4 Security and Privacy

One is currently able to use a credit card to make payments over the Internet, however, each time you make a call, pay a bill or purchase goods with your credit card that information goes into a database somewhere. Furthermore, the information different organisations collect about you can be linked via a unique number (social security in the US and Tax File Number in Australia) to form a dossier on your habits, effectively your life. Whether this exercise is to help fight crime, assist marketing campaigns, or part of a grand conspiracy (see Internet newsgroup "alt.conspiracy" for all the conspiracy theories you could never imagine) remains a question, but in any event privacy is eroded and big brother is watching.

As we will see later in this discussion, if the government is not able to target an offshore provider of an illegal service (such as gambling), they can at least target their citizens. However, to collect proof of the citizen's crime, law enforcement must principally rely on one of three methods:

1. Have a family member or other "insider" report the activity and provide proof (read George Orwell's novel "1984" for a greater insight into this);
2. Setting up a sting operation with a "false" illegal site; or
3. Gather evidence through surreptitious surveillance by tapping the home user's telephone or "listening" into the key-strokes or what is displayed on a computer monitor (your wire from your key-board and your computer screen make for good transmission antennas).

Under a democratic society all three methods are difficult to realise. Even the most feasible method, surveillance, is difficult in that police cannot randomly access and review electronic transmissions without first obtain a court order. To make matters more difficult, courts may only authorize wiretaps upon a showing of probable cause that a crime is being committed. However, this type of evidence of illegal Internet activity is difficult to obtain except by wiretap.

By far the biggest problem is that many illegal gambling (and other) sites will begin using data

encryption. If this occurs, a wiretap will be useless unless law enforcement has the key necessary to decrypt the communication.

3.5 Encryption

So what is encryption besides being a means for conducting illegal activities on the Internet and getting away with it? Well, it is essentially a means of scrambling data so that only the holder of a special electronic key can understand the messages.

So the story goes, ten years ago a fellow by the name of Phillip Zimmermann, issued a program in the public domain called "Pretty Good Privacy" (PGP). This form of encryption has no trap doors to enable Government monitoring.

The US Government alleges that Mr Zimmermann violated U.S. Law by exporting an item listed as a "munition" without license to do so and may indict him. However it is too late, if one surfs the net, you can readily obtain PGP from a country other than the US. Oh, by the way, Mr Zimmermann has also released "PGP Phone" to the public – this software scrambles voice communications.

To counter encryption technologies, the U.S. Congress has proposed two bills, one of which was passed and has become law. That law is known as the "Digital Telephony Bill." It provides in relevant part that the telephone provider must be able to provide police with the "real time" interception of a wire transmission pursuant to a court ordered wiretap. This interception must be without detection and must allow the police to conduct the interception from their own monitoring facility.

The second is legislation proposed by the Clinton administration, suggesting the use of a "Clipper Chip." If passed into law, it would establish a program whose objective is to require the use of cryptographic software or equipment that would incorporate a special trap door mechanism that "will permit the federal government to decrypt communications without the knowledge or consent of the communicating parties" when it considers this necessary for law enforcement or intelligence purposes. Unless this bill becomes law, the application of the Digital Telephony Bill to fight Internet crime will be useless.

I understand Australia is not considering similar legislation.

Regardless of whether I want to gamble surreptitiously using encrypted messages or not, the question remains: "How do I cyber-gamble?"

4. HOW TO CYBER GAMBLE

Lets assume the computer has been configured to largely automate the process of gaining access to the Internet. That the user has a current account with an Internet service provider, and that the user has a cyber-casino in the list of "favourite sites" in the browser program.

O.K., so I power up my computer, I click on the Internet Icon, when connected I click on the cyber-casino in my list of favourites – I'm there!

To open an account (a currently operating Internet Casino is used in this example), I enter the usual stuff in an on-line form such as Name, Address, Phone number, etc. Then it gets interesting: I am asked if I would like to establish an off-shore account, followed by a selection of how I would like to wager and how I would like to collect winnings, the options, being:

1. A large variety of credit cards,
2. By Wire transfer,
3. A variety of Money Order selections,
4. Cheques, and
5. No less than seven different forms of digital money transactions.

Once my account is I am ready to play the game of my choice.

Easy? You bet. But sorry, but there is something wrong with this picture.

Most of the current on-line gambling establishments are shadow companies with headquarters offshore. Reason? To take advantage of lax regulation abroad and, of course, to distance themselves from law enforcement officials. So what does this say about the credibility of the digital casinos?

Expect big risks when opening an account with your credit card or using digital cash that establishes a direct link to your bank account, and by the way, how do you really know whether their casino system is secure, or if you are being cheated?

The reality of it is that to cyber-gamble outside of Australia, you would send money thousands of miles away to an unregulated, uncontrolled, and probably illegal enterprise, give them a credit card number, then trust them to tell you when you've won.

I don't gamble, but if I did I would only gamble in a cyber casino that I knew was well regulated and well controlled by a reputable government agency. So lets move to now looking at regulation.

5. REGULATED VENUE GAMING ISSUES VERSUS INTERNET GAMING.

5.1 THE INDUSTRY

CURRENT: All entities involved in the supply or operation of gaming equipment must undergo extensive probity investigations to establish confidence in the stability and morality of the organisations. They must also pay a license fee to the Government.

INTERNET: An offshore Internet Gaming provider is not bound by any licensing requirements, nor are the companies that produce the software.

5.2 GOVERNMENT REVENUE

CURRENT: The Government obtains revenue associated with the license fees, taxation, and unclaimed prizes. A significant percentage of the revenue derived from taxation is put into community projects.

INTERNET: On the Internet the Government obtains nothing from the offshore operator.

5.3 SOCIAL CONSIDERATIONS

5.3.1 Access to Minors, intoxicated or excluded persons.

CURRENT: There are significant deterrents for the gaming venue that permits gaming equipment to become accessible to minors, persons who are intoxicated or excluded.

INTERNET: Unlike a current casino, there are no guards at the door of an Internet gaming provider to keep these people away. To the Internet each person is simply a number, there is no way a provider knows its customer's age or state of soberness (Do we fit a breathalyser to each PC and make drink-surfing a crime).

The onus to prevent children accessing a gaming service or any other service not deemed desirable currently resides with the parent, school or library. Special software such as *Net Nanny*, *Cyber Patrol* and *Cybersitter*, is required to filter what the children are able to access.

5.3.2 Hours and Location of Gaming

CURRENT: There are generally restrictions on the permissible hours of gaming at a legal venue.

INTERNET: On the Internet gambling is available 24hours a day, seven days a week, 365 days a year and not from a remote venue, but you own home.

5.3.3 Wagering

CURRENT:

1. Gaming Legislation in Australia and New Zealand prohibits credit betting.
2. Also, wagers are generally made by either a direct transfer of cash into a gaming device, or via the transfer of cash to a player account. The patron can feel and see the real money when they have it and are left with an empty pocket when its spent.

INTERNET:

1. At this time Internet wagers are predominantly made via credit card transactions, although wire-transfers and other forms of money transfer are generally available.
2. Cyber-transactions are virtual. For a patron that has difficulty equating virtual concepts to "real-life", it is quite feasible that such a person would be a prime candidate for trouble especially if credit betting proliferates the net.
3. Furthermore, as addressed previously, laundering money through the cyber-casinos becomes too easy.

Internet gaming will inevitably result in a social cost to be borne by society, but the Government will not obtain revenue from outside of its jurisdiction to help welfare organisations that assist with such problems.

5.4 APPROVAL OF GAMING EQUIPMENT

CURRENT: As discussed previously, Gaming Regulators specify standards to achieve objectives. Gaming equipment is tested for compliance with such standards by independent testing laboratories. Products may not be sold by suppliers unless the product is approved (under the various Gaming Acts) as complying with the standards.

The regulatory objectives of gaming regulators in Australia are that gaming be:

- fair;
- safe;
- secure;
- reliable;
- auditable;
- profitable, and
- publicly acceptable.

INTERNET: As the game information transmitted to the punter's PC may be from a country on the other side of the Globe, the software defies testing for compliance by an "endorsed" Government testing agency.

Internet gambling presents us with a situation where no rules apply and no public policies are applicable.

6. REGULATION OF THE INTERNET AND INTERNET GAMING

We firstly need to break "Internet gaming" down into its smallest elements, being "Internet" and gaming". I assert that there are no major obstacles to regulating gaming. The obstacles are solely in regulating the Internet. Consequently, if we talk about the regulation of gaming, one must appreciate that regulatory measures should address the activity itself rather than the medium on which the activity takes place.

That is, if it is illegal to gamble in a jurisdiction, it is illegal to gamble in a jurisdiction. The law should be independent of the medium. If the definition of gambling is broad enough, then irrespective of how I gamble, if I gamble and it is illegal to do so, then I am acting illegally.

In the case of Internet gaming, it is the control of the medium that is of paramount concern. Gaming is local, the Internet is global.

We shall now briefly look at attempts at regulating the Internet and attempts at regulation gaming on the Internet.

6.1 Regulation of the Internet

6.1.1 United States Regulation of the Internet

There have been various attempts at regulating on-line content in the U.S. Many found to be unconstitutional. In support of the U.S. Constitution, the House of Representatives approved an amendment to the Communications Bill (the Cox-Wyden Amendment) which prohibits the FCC (similar body to Austel) from Regulating the Internet and other interactive services. This presents a major hurdle to regulation, however, it does NOT prohibit the enforcement of any State or Federal Law.

The U.S. Communications Decency Act of 1996 legislates against obscene, harassing and wrongful utilisation of telecommunications facilities as would be deemed to be so by generally accepted community standards. The clear focus is on the individual that creates the material.

6.1.2 Australian Regulation of the Internet

The Australian Broadcasting Authority envisages a code of conduct developed by the industry, with relevant government agencies looking over industry's shoulder and advocacy groups participating in the process. It is proposed that the Commonwealth Parliament would enact amendments to the *Broadcasting Services Act of 1992*, that renders illegal behaviour which did not conform with the code of conduct.

The Objectives of the regulatory regime are to:

1. Respect community standards;
2. Encourage the provision of a means of addressing complaints;
3. Place a high priority on the protection of minors, and
4. Codify the responsibilities of on-line service providers in relation to objectionable content and other content that is of concern to community.

6.1.3 Other Approaches

India limits Internet access solely to Universities. Saudi Arabia has only a single government controlled Internet Service Provider so they can monitor the activity of their citizens. Whilst in some communist Asian countries, where the Internet is deemed to corrupt the correct thinking of the people, it has been reported that a person faces a lengthy stay in an "attitude correction center" if they are found with a modem, let alone accessing the Internet.

So if this is what is going on to regulate the Internet, what about gambling on the Internet?

6.2 Regulation of Gaming on the Internet

Governments around the World who profit from the "soft-tax" that is known as gambling are becoming increasingly concerned by conservative estimates that gaming on the Internet will be a U.S. \$50 Billion industry by the turn of the century.

6.2.1 United States Regulation of Internet Gaming

Recently, the US Federal government has taken steps to become involved in public policy decisions regarding gambling. This first step is indicated by Congress passing a law that created a Federal commission to study the proliferation of gambling in the United States. The commission seeks to lay a foundation in preparation for possible adoption of Federal policy and regulation. A major issue on the commission's agenda is Internet gambling.

The National Association of Attorneys General (NAAG) formed an Internet Working Group. This group decided on a strategy that has two major components:

1. Amend the Wire Communications Act (' 1084) to assure that Internet gambling, in any form, is illegal and that prosecutors can obtain jurisdiction over offenders; and
2. Develop joint enforcement strategies with the Department of Justice, the Federal Trade Commission and with appropriate law enforcement officials internationally to stop the spread of illegal Internet gambling.

While the Wire Communication Act of 1961 prohibits the use of phone lines to place bets across state lines, the question of whether the act applies to online gambling remains unsettled and although current Federal regulations criminalise sports-wagering online, those laws have loopholes. For instance, off-track betting has taken off on the Web because of the Interstate Horse Racing Act of 1978, which makes interstate simulcasting of horse racing legal. I understand that so far, no gambler has been charged with violating federal laws by wagering over the Internet.

The issue is further complicated by the fact that online casinos have moved their operations offshore.

On the 20 March 1997, *Wired News* reported that:

The Internet Gambling Prohibition Act of 1997 has been introduced in the Senate and referred to the Senate Judiciary Committee. The bill provides that persons engaged in the business of betting or wagering who knowingly use a communication facility for the transmission or receipt in interstate or foreign commerce of bets or wagers would be subject to fines up to \$10,000 and/or imprisonment up to two years. The bill makes exceptions for bets and wagers if they are legal in the state or foreign country in which the transmission originates as well as in the state or foreign country in which the transmission is received. The bill will apply in addition to any state laws and holds ISPs liable for providing access to gambling sites once state or local law enforcement agencies have notified the ISPs that such activities are taking place.

6.2.2 Australian Legislation

Meanwhile in Australia, the Regulators of gaming in their respective States and Territories have established a task force with a view to framing Legislation to control gaming on the Internet. The task force have published a *"Draft Regulatory Model for New Forms of Interactive Home Gambling"*.

The model recognises that any State or Territory acting alone will not be able to develop an effective regulatory system by stating, and I quote; "In the long term a non-cooperative approach can only result in the ineffective regulation of interactive home gambling products and erosion of the gambling taxation revenue of all States and Territories." The model does not propose Federal action.

Despite the State's view of Federal involvement, I read significant scope for the Federal Government to take control of Gaming (at least on-line gaming) into a document titled, *"The Principles for a Regulatory Framework for on-line services in the Broadcasting Services Act 1992"*, published by the Federal Department of Communications and the Arts. Some reasons I draw this conclusion are:

1. The definition of "on-line service", is broad and the ABA will have the power to set standards in relation to the service on offer. Such a service could be gambling.
2. The rules would make it a Federal offence for an Internet Gambling Service Provider approved in one State to break the Gambling Laws of another State.
3. If the ABA consider an existing code does not provide sufficient community protection, the ABA will have the authority to determine the standard.
4. The role of the ABA is to liaise with other regulatory bodies Internationally regarding cooperative Government proposals, and I conclude this part by stating it is my understanding that Under the Australian Constitution, the Federal Government may take control away from the States in areas that are the subject of International Agreement.

6.3 COMMENT ON DRAFT REGULATORY MODEL

I have a Far Side comic by Gary Larson on my coffee mug. It depicts a frog hanging by its tongue from a jumbo jet (big fly). I purchased it to remind me that no task is too great, but there is also another meaning that I could apply to the regulatory model which is "Now that I have caught this thing, what do I do next?"

It is said that, "That the longest journey is begun with a single step." The model takes that step, the step is forward and probably in the right direction. But that is all it is, a single step. There is a lot of work to be done and little time to do it. Some observations...

The approach seeks to minimise the impact of products provided from overseas or illegal sources by maintaining (and creating) obstacles to their advertising and marketing and by providing alternative products where the entitlements of players are protected. One thinks of many ways to control these aspects and more ways to get around them.

The legislation will provide for the free flow of information between regulatory bodies in each State and Territory and a licensing scheme will be based on a system of mutual recognition...admirable objectives, however to date the level of information exchange on matters of domestic gaming has been somewhat limited and licensing schemes remain independent between jurisdictions.

Operational controls over each product will be technology based using similar principles to those used to control and regulate existing gaming networks. Again an admirable objective, but currently all jurisdictions take a different approach. There is no standard, so by default applying similar principles will result in divergence.

Issues such as a demonstrable ability of the operator to pay prizes, approvals of gaming equipment, privacy, lodgement of complaints, provisions for problem gambling, provisions in the Legislation and a general code of conduct seem reasonable, but again require some detailed thought.

Prohibition of credit betting, provision for self-exclusion and problem gambling service contact is to be commended, as is the requirement for proof of identity. However these matters, as with all restrictions imposed by the model, can only apply to Internet gaming services offered from within Australia.

The model is contradictory in that on one hand alternate sites and interactive terminals in those sites are not envisaged, but on the other hand provision is made for a TAB or bookmaker to offer virtual lotteries, casino games and machine gaming. The model states that regulators will be subject to a Uniform Enforcement Code, but in numerous locations refers to individual jurisdictions setting requirements – how can one uniformly enforce different rules? The model does not propose a prescriptive technical national standard, but then requires independent testing...this begs the question, "Testing against what?"

Powers of Inspectors are defined, but what jurisdiction will they have in sister States and overseas? Surely matters of extradition, and international cooperation are better dealt with at a Federal level?

Any liability arising from neglect will be attached to the regulatory body that licensed the relevant service provider and approved the product. So one day all 100 000 users of a South Australian Internet Gambling Service are awarded \$1 000 000 because of a software bug. Is the South Australian Government liable? I believe the model requires clarification in this area.

Taxation will be applied on the basis of location of residence of the player and will be set by the Government of the jurisdiction of the player's residence. It is envisaged that taxation on overseas sourced bets would be lower than for local bets. The rate of local tax is to be no greater than for existing products. Furthermore, the fee structure and licence term will be set by each Jurisdiction. There is something wrong with this picture. This concept would seem to me to promote the prostitution of the States and Territories, by trying to sell themselves by undercutting their neighbours. Perhaps the revenue sharing arrangement can work, but I only see it working where taxes, fees and charges are consistent and centrally controlled.

All service providers are required to test the validity of a player's jurisdiction of residence and may have an action taken against them where they do not. Internationally, this is a challenging task. Furthermore, by insisting that the service provider know the origin of its players, this implies to me that the Regulator will not allow a service provider to accept a bet from a player where gaming is illegal. This will limit the market of the service providers substantially. However, the alternative may be that the regulator becomes a co-conspirator to aiding a foreign citizen break the laws of its country.

The model concludes by stating that..."the effect of licence conditions imposed at the Federal level would be somewhat cosmetic." I beg to differ.

7. MAJOR OBSTACLES TO REGULATION OF THE INTERNET

7.1 Definition

Telecommunications have had a significant history of involvement and regulation by Government. The development of the Internet has not followed this model. Having its origins in academia, the Internet is evolving, being driven by market forces and user demand. It has, so to speak, been built “by the people for the people”. Its democratic, unstructured, dynamic nature means that no-one can really define a comprehensive map of the Internet, who really owns it, who controls it, who participates in it?

OBSTACLE 1: Analysis of the problem should precede design of the solution, but the problem is dynamic in nature, how then does one regulate something that one cannot define or analyse?

7.2 Jurisdiction

If it is illegal to operate or gamble in a “real” casino in a particular Jurisdiction, it should therefore be illegal to operate or gamble in a “virtual” casino. However, if the “virtual” or Cyber-casino is “off-shore”, then the operator is outside the laws of the Jurisdiction, so it comes down to the legality of playing a game in that Jurisdiction. That is, however, if we are indeed able to define where on the planet the game is actually being played and where the wager is placed!

To further complicate things, I could suggested that because the Internet gaming operator must deal directly with a financial institution to facilitate a wager, that the wager is actually being placed in the home country of the Internet operator. All the player is sending from their P.C. is wagering information, and not actually conducting a wager as they would by physically placing a \$1 coin in a poker machine. They are effectively having a broker do this for them.

Is it the “off shore” service provider who is acting illegally, or the individual within a jurisdiction who uses the service or both?

OBSTACLE 2: How does a regulator regulate (and enforce the regulation of) something outside of that regulator’s jurisdiction?

7.3 Cooperation

Given that the Internet is a global “animal”, it follows that any hope of regulation would be via international cooperation. Indeed, we have seen the United States and Australian Federal Governments recognise this, although as we observed earlier, the Australia State model does not seek Federal Government involvement.

Meanwhile, the Electronic Frontiers Foundation presents a globally united front against what they consider are the “irrational and unnecessary laws” governing the Internet. The Blue Ribbon Campaign is the international movement promoting free speech on the Internet, and a global electronic currency is emerging.

How then, do we hope to regulate Internet gaming when regulators not just internationally, but even nationally cannot agree on a fundamental issues such as the definition of what constitutes a “gaming machine”.

OBSTACLE 3: Regulators constitute a team of experts, not an expert team. They must cooperate, not only at a State Level, but also at a National and International Level.

7.4 Security and Privacy

As we explored earlier, on the Internet, your privacy is assured using encryption and other techniques.

The potential to anonymously launder money, avoid tax, engage in terrorism or illegal activities generally is basically assured.

OBSTACLE 4: If the regulator is oblivious to what is being transmitted and received, how do they know if the law is being broken?

7.5 Balance of Knowledge

John Perry Barlow of the Electronic Frontiers Foundation warned in 1995 that we were in danger of getting “government by the clueless, over a place they’ve never been, using means they don’t possess”.

The reality is that the industry is driving the technology, not government.

OBSTACLE 5: Governments are bound to being reactive rather proactive in defining controls.

8. MAJOR OBSTACLES TO VIABLE GAMING ON THE INTERNET

Some existing services offer better presented, more reliable functionality than others, but most appear to be "under construction". Sometimes things work, sometimes they don't. Sometimes response times are good, sometimes a waste of life. Sometimes you are unable to get access to have a look. Conscientious services warn visitors to check with local authorities before gambling at the site. The Governments and Operators involved have little or no track record in the industry. Needless to say, none of this does anything to inspire confidence, not to mention trust, but the situation is changing.

So what ingredients constitute a viable Internet gaming operation?

8.1 Credibility

8.1.1 Government Support

"If you can't beat 'em join 'em". Government guarantees are required by credible regulators in return for taxation. On line should be the rules and regulations under which the virtual casino operator is governed. Additionally the published legislation, rules, code of conducts and technical requirements to which a virtual casino operator's games and systems must comply should be available for public scrutiny.

The player should have "on-line" access to an inspector, or at least a patron dispute form to initiate an investigation by a regulator.

The operator should be audited on a regular basis by an auditor with international credibility and the auditor's report should be available to patrons.

In short, there must be a Government guarantee that the objectives stated previously in this paper are realised, that all winnings will be paid, that there is a right of appeal, that the operator is fully accountable.

Whether players then play with the regulated versus the unregulated operators will depend largely on the degree to which the players perceive the regulating authority as legitimate and effective.

8.1.2 "Name" Brands

Ask yourself how many times you have played a "no-name" poker machine at a no-name casino? Now ask yourself how many times you have played an IGT, or Aristocrat or Bally poker machine at a venue run by Hilton, Harrahs, MGM, Crown, Aspinalls, etc?

Currently gaming regulators have control over existing name-brands in that if such companies become involved in an Internet gaming operation, they potentially jeopardise their licences in their home Jurisdictions and therefore their business (e.g. It is my understanding that it is illegal for someone residing outside Nevada, U.S.A., to gamble in Nevada via communications medium). By default, Regulators are forcing the credible operators that have undergone the probity investigations, the audits and pay their tax out of the market at the risk of allowing a criminal, tax-avoiding, fly-by-night operator or an operator with no reputation on the line and no incentive to “get it right” to flourish. This is a ludicrous situation.

Strategic alliances are required. Most significantly, such an “alliance” with the prospect of support from a “credible” regulator would encourage the credible operators and suppliers.

8.1.3 Social Concern

Virtual counselling services that are available from within the cyber-casino and partially or wholly funded by the cyber-casino must be a consideration.

Prevention of access by minors and excluded persons and prevention of persons gambling in their home jurisdictions where it is actually illegal to gamble must also be a consideration.

But by trying to be socially responsible, perhaps by posting an on-line warning discouraging participation of potential customers in those countries where it is illegal to gamble, an Internet gambling operator may be demonstrating that they knew their conduct was in violation of a particular country’s law. This may actually strengthen a case against them.

It may actually be better for their business to “stick their head in the sand”, so to speak.

8.2 Law

In a virtual world, only those that have a reason to uphold the law will.

As stated above, existing industry players in a virtual world would be putting their “bread and butter” physical markets at stake. But even if Regulators see the logic in allowing the name-brands entry into the market, there is still a concern that the cost of compliance would be higher than benefits.

If regulation is extremely costly and these costs are borne by the Internet gambling operators, then the extra cost will likely result in lower prize values or returns to player. The regulated operator's advantages, may be overwhelmed if the unregulated cyber-gaming operator can offer higher returns than the regulated operator.

8.3 Data Transfer

Given data transfer rates, interactive games such as roulette or the pokies are “painfully” slow when played on the Internet and therefore present little more than an interest factor. For games such as lotto or sports-betting speed is not an issue.

Where the current providers have been failing is that they have been transmitting game results as graphics at low transmission speeds. The approach that should be taken is one of a client-server approach whereby a CD is distributed to users (or graphics are firstly down-loaded to the home computer over the Internet). This disk contains copyrighted graphics. When the Internet game is played, only numbers are transmitted (in encrypted form) and these numbers equate to positions on a reel, for example. Nevertheless, with cable modems around the corner, this issue may be set to become a thing of the past.

8.4 Computer Literacy

One year ago, computer literacy and access to Internet ready computers was identified as a problem. This aspect is rapidly disappearing.

8.5 Financial Transactions on the Internet

There is no gambling if there is no exchange of currency, consequently, the current monetary transfer systems available present a major obstacle to Internet Gaming providers. What does currently exist is either manual and slow or insecure. However, this situation is changing with schemes to provide a global electronic currency fast becoming a reality.

In the mean-time I suppose we give our credit card details to complete strangers over the telephone or in a restaurant when paying bills, so why not over the Internet? I for one would feel much more comfortable engaging in a transaction through a respected financial institution that I knew to be secure.

And to this end, if Government cannot target the illegal gaming providers, they may be able to target the finance companies. According to the Minnesota Attorney General, if Visa knowingly assisted in the transfer of funds between a Minnesota home and an Internet Casino, Visa would be guilty of aiding or conspiring to commit a crime and be held liable.

8.6 Marketing

Currently, to access a cyber-casino you must look for it. So the target market is largely restricted to people who are wanting to gamble...not a bad social policy.

However, in an attempt to capture a global audience, cyber-casinos have begun to advertise in a search engine. For example, if you do a search for eating habits of a warthog, while you wait for a result you may be confronted with an add on your computer screen.

To capture a local audience, there is talk of Internet gaming providers forming strategic alliances with Internet Service Providers. The implication is that an Internet Service Provider may have a local or national subscription. Unless you configure your browser otherwise, when log onto the Internet the first thing you see is your service provider's home page. Generally, you will have the option to click a box to: search, read news, see what's new. Soon there could be a "Gamble Now" box.

9. THE FUTURE OF GAMING

Today's gambler is faced with a range of choices when it comes to the question of where to place the next bet. These are, for example:

- Casino (Gaming machines, Keno, Tables, Sportsbook)
- Club (Gaming machines, Raffles, Keno)
- Church Hall (Bingo)
- Hotel (Gaming machines, Raffles)
- News Agent (Lotto, Pools, Scratch-It tickets)
- Stock Exchange (Shares, futures trading)
- TAB (horses, dogs).

Most of these games are currently available in some form on the Internet, so why go to the trouble of having a shower, catching a bus, etc., etc. when you can play what you want where you want from the comfort of your lounge chair and still have the ability to interact socially via the key-board? But why bother about a key-board as voice recognition technology exists today.

Why haven't I mentioned Pay-TV and Telephones? Why bother, because within the next five years, I believe you will have a fully integrated entertainment computer sitting in your lounge room. Videos and Music will be purchased, rented and down-loaded via the Internet. The telephone will be fully interactive all your shopping may be done remotely. If you decide to watch a rugby match, you can pop up a window and bet on the next conversion in real-time, open another window to read your mail and another to order a pizza.

If you become bored with the comfort of your lounge room you put on the virtual balaclava a glove and you vanish into virtual reality. You are no longer staring at your computer screen, you are walking into a casino but you have not left your lounge room. You stroll around your lounge room (accidentally kicking the cat) admiring the "casino construction", play a few hands of blackjack, move onto a poker machine and then sit at the Keno lounge and strike up a conversation with the person in the chair beside you, another visitor to this casino who lives on the other side of the globe.

10. CONCLUSION

10.1 *A bleak future?*

Gaming is generally considered acceptable so long as it is contained to certain venues, does not result in criminal activity either directly or indirectly, provides revenue for the Government and that the social cost does not outweigh the benefits derived from revenue. Gaming on the Internet has the potential to defile all such criteria.

Australians who currently go to the track, the casino, the club or the pub could be gambling from their homes, pouring billions of dollars off-shore, and depositing any winnings into off-shore accounts.

The casino's linked jackpots could be competing with global jackpots the magnitude of which might be in the hundreds of millions. Gaming machine manufacturers will be competing with PC manufacturers, while on-line gaming systems become obsolete. The Government may not realise any revenue, part of which is used to fund treatment of problem gambling, the incidents of which will escalate.

The Australian State's draft regulatory model is an encouraging cooperative effort. However, without federal intervention there are enormous financial incentives for one of the regulatory participants to offer an interpretation that could potentially compromise the regulatory model. These interpretations would be made to entice operators by ensuring that the "rebel" jurisdiction was able to offer the cheapest and easiest entry to the market. Or worse still, a regulator could break ranks and offer incentives to one or more cyber-gaming operators to establish in their jurisdiction, despite the regulatory model. This could result in a largely de-regulated cyber gaming market.

An unregulated environment provides entry for criminal involvement. As criminal involvement in an unregulated Internet environment is exposed by the media, the public may erroneously perceive that criminals are involved in all gambling environments, including regulated environments. Similarly, if a scandal occurs involves an Internet gambling operator, where an operator cheats the players or refuses to pay legitimate winnings, the public may lose confidence in legitimate gaming operations.

Given an unregulated Internet Gaming Industry, the pressures for a level playing field to apply to the non-cyber gaming market would be great. The result being a potentially complete deregulation of not only communications based gambling, but also traditional forms of gambling and gambling venues.

10.2 Recommendation

The future will present a prosperous Internet gaming industry, but governments will need to decide if it will be predominated by criminals or by legitimate businesses. The Technology is global and will continue driving public policy and the law while these aspects remain local.

A special task force was recommended in 1995 and again I make this recommendation. The following list offers criteria for establishing such a body:

1. A task force is established to investigate methods of regulating gaming on the Internet. The task force be Federal on the basis of:
 - The global scope of the Internet.
 - Concern of Federal bodies with Federal issues such as law enforcement, tax office, Austel and the Australian Broadcasting Authority's interest.

- Each Australian State and Territory currently has a different approach to gaming.
2. The Federal Government task force would work closely with the State Governments in preparing an appropriate regulatory model, embodying matters of National concern into Federal legislation.
 3. The task force would initially identify the objectives it wishes to realise (many embodied throughout this presentation), then an assessment of the risks involved with each of these objectives would reveal which aspects of the gaming industry or gaming equipment need to be controlled to minimise the risk. The appropriate level of control could then be applied via Legislation, Regulations, Technical Requirements, requirements on Internal Controls and Operating Procedures, and Guidelines for International agreement.
 4. The Federal Government task force would ensure the model is adhered to by all participants, and provide assistance to State Regulators in the enforcement of legislation.
 5. The task force should establish federal links to overseas regulatory bodies.
 6. It must work in closely with the Australian gaming industry private sector as they have a large stake in the success of such a project.
 7. The task force should consist of legal, financial, regulatory and gaming industry expertise. These people must be well versed in the use of computers and in the gaming industry.
 8. The task force should commission social/financial studies. To date there is a great understanding of the psychology of problem gambling, but very little effort appears to have been made in the way of understanding the causal effects of the relationship between humans and gaming technology or the demographics of certain types of gamblers. It is facts that are required to understand the "psychology" of gaming on the Internet, for we can't control what we don't understand.

Government must appreciate that the Internet is not simply about "broadcasting" of images and text, it is about commerce. The number of Internet users is growing to an estimated one billion by the year 2000 when gaming on the Internet is projected to be a U.S.\$50 Billion industry.

You can only control a global problem on a global scale.

11. APPENDICES

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11.2 THE AUTHOR

Steve is currently a gaming consultant. He has been involved in Gaming matters in every State and Territory of Australia, New Zealand, New Guinea, and several States in North America and Canada at various times over the past 8 years. He is the only consultant in the Gaming Industry who has worked as a Gaming Regulator, Gaming Operator, Gaming Equipment Manufacturer and Independent Gaming Equipment Tester. This background facilitates a balanced and objective outlook toward matters of interest to the industry.

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CONTROLLING THE TECHNOLOGY OR CONTROLLING THE GAMES

Gambling, Technology and Society
Regulatory Controls for the 21st Century
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Prepared by: S. J. Toneguzzo

If the only tool you have is a hammer, you tend to treat everything as if it were a nail. Anon.

1. INTRODUCTION

During the past hundred years gambling has become increasingly accessible to the general public. Gambling has progressed from being illegal, to being legal in remote locations (c.f. Las Vegas), to being legal in the urban casino, the local pub, etc. In all cases the presiding regulatory authority has had the power to control all forms of gambling in their jurisdiction. Now, Internet gambling brings a global gambling market into the home: Is conventional gambling policy framework and regulation able to be applied to Internet gambling? Is the control solution technical, political, legal, economic or societal?

This paper will explore options for control. However, before we can explore options for control, we must define the problem. The Internet provides new mechanisms for perpetration, detection and control. Does it provide new gambling? If we break "Internet gambling" down into its smallest elements, being "internet" and "gambling", perhaps there are no obstacles in regulating gambling. Perhaps the obstacles are solely in regulating the Internet. The activity (gambling), and the medium on which the activity is conducted (Internet), are separate issues and as such should be the subject of different forms of control.

That is, if it is illegal to gamble in a jurisdiction, it is illegal to gamble in a jurisdiction. The law should be independent of the medium. If the definition of gambling is broad enough, then irrespective of how I gamble, if I gamble and it is illegal to do so, then I am acting illegally.

2. EVOLUTION OF TECHNOLOGY ASSISTED GAMBLING

Where is it taking us?

Most of the games we play now are currently available in some form on the Internet, so why go to the trouble of having a shower, catching a bus, etc., etc. when you can play what you want where you want from the comfort of your lounge chair and still have the ability to interact socially via the key-board? But why bother about a keyboard as voice recognition technology exists today.

Within the next five years, I believe you will have a fully integrated entertainment computer sitting in your lounge room. Videos and Music will be purchased, rented and downloaded via the Internet. The telephone will be fully interactive all your shopping may be done remotely. If you decide to watch a rugby match, you can pop up a window and bet on the next conversion in real-time, open another window to read your mail and another to order a pizza.

If you become bored with the comfort of your lounge room you put on the virtual balaclava and glove and you vanish into virtual reality or if recent West Australian technological innovations become commercial, holographic images are projected around you and you are there (similar to the "holadeck" concept in Star-Trek). You are no longer staring at your computer screen, you are walking into a casino but you have not left your lounge room. You stroll around your lounge room (accidentally kicking the cat) admiring the "casino construction", play a few hands of blackjack, move onto a poker machine and then sit at the Keno lounge and strike up a conversation with the person in the chair beside you, another visitor to this casino who lives on the other side of the globe.

You are physically at home, but intellectually anywhere on the planet.

Suddenly everything goes blank, did you trip over the power cord again or have your country's regulatory authorities detonated a data-bomb? The possibilities are only limited by one's imagination.

Australians who currently go to the track, the casino, the club or the pub could be gambling from their homes, pouring billions of dollars offshore, and depositing any winnings into offshore accounts.

The casino's linked jackpots could be competing with global jackpots the magnitude of which might be in the hundreds of millions. Gaming machine manufacturers will be competing with PC manufacturers, while on-line gaming systems become obsolete. The Government may not realise any revenue, part of which is used to fund treatment of problem gambling.

...now how do we control that?

3. RECOMMENDED CONTROL

My suggestion is not through prohibition, not through deregulation but through a national and multilateral, proactive and responsible approach that involves federal and state governments and industry.

An industry association that provides credibility.

The product is *gambling*, the commodity is *name brands, regulation, right of appeal, established financial institutions, social responsibility, fair games, customer service*.

A global economy is all about consumer choice!

But is there another approach? We shall now explore the possibilities.

4. MAJOR OBSTACLES TO REGULATION OF THE INTERNET

To set the scene, let's revisit what I described in a '95 paper as the five major obstacles to the regulation of the Internet.

OBSTACLE 1: The Internet has, so to speak, been built "by the people for the people". It is democratic, unstructured, and dynamic in nature. How does one regulate something that one cannot reasonably define or analyse?

OBSTACLE 2: Is it the individual within a jurisdiction who uses the service, or the ISP, or perhaps the bank who handles the transaction who is acting illegally? Or is it the "off shore" service provider? How does a regulator reasonably regulate (and enforce the regulation of) something outside of that regulator's jurisdiction?

OBSTACLE 3: The Electronic Frontiers Foundation presents a globally united front against what they consider are the "irrational and unnecessary laws" governing the Internet. The Blue Ribbon Campaign is the international movement promoting free speech on the Internet, and a global electronic currency is emerging. Meanwhile gaming regulators not just internationally, but even nationally have difficulty cooperating (this does not mean they don't want to). For example the basic definition of what constitutes a "gaming machine", differs from State to State. Regulators constitute a team of experts, not an expert team. They must cooperate, not only at a State Level, but also at a National and International Level.

OBSTACLE 4: Given the use of encryption, anonymisers, and other readily available tools, if the regulator is oblivious to what is being transmitted and received, how do they know if the law is being broken?

OBSTACLE 5: John Perry Barlow of the Electronic Frontiers Foundation warned in 1995 that we were in danger of getting "government by the clueless, over a place they've never been,

using means they don't possess". The reality is that the industry is driving the technology, not government. Governments are bound to being reactive rather proactive in defining controls.

5. POSSIBLE ALTERNATE METHODS OF CONTROL

I'll begin looking at alternate methods of control with an observation: The Internet knows no boundaries and is therefore beyond the law. However, the service providers and the users must comply with the laws of the jurisdiction in which they are based. To ensure the above objectives are realised therefore, if the service provider is off-shore and outside of local jurisdiction, then the users, the banks or the ISPs become the target." Open your mind as we go on this journey.

5.1. ISP

There have been various attempts at regulating on-line content in the U.S. Many found to be unconstitutional and several attempting to place the onus for content filtering squarely upon the shoulders of the ISP. This approach was not practical and failed.

However, "The Internet Gambling Prohibition Bill of 1997" has been introduced in the Senate and referred to the Senate Judiciary Committee. The bill provides that persons engaged in the business of betting or wagering who knowingly use a communication facility for the transmission or receipt in interstate or foreign commerce of bets or wagers would be subject to fines and/or imprisonment. The bill holds ISPs liable for providing access to gambling sites once state or local law enforcement agencies have notified the ISPs that such activities are taking place.

5.2. Banks

I recall reading a statement where the Governor of Missouri suggested that *Visa* or any other financial institution would be considered guilty of aiding and abetting a citizen of the USA to break the laws of its country if it participated in the placing of a wager on an on-line casino. To gamble, one requires money. The more difficult it is to place a wager the less viable the activity becomes.

Perhaps it could be made illegal for banks to participate in such transactions or the onus is placed on the banks to alert authorities to the possibility of gaming transactions taking place.

Like restrictions on ISPs this may arguably be an onerous, and impractical requirement.

5.3. Street Patrols

Because the cable from a computer keyboard and monitor act as aerials radiating signals, our law could patrol the streets in a suburb with listening equipment that would detect these signals (it is

arguably of no use monitoring communications at a phone exchange given encryption), and automatically filter them to detect illicit commands or actions. A positive I.D. could result in a high-energy directional pulse of electromagnetic radiation that would destroy every item of electronic equipment in the offender's house...or a more sedate fine sent in the post.

A labour intensive and a logistically cumbersome approach, and based on the precedent set in the days of television licensing, probably controversial.

5.4. Communications Filtering

Now, if the Internet is above the law, does it follow therefore that the user has no rights?

Eavesdropping without a court order would be one useful exploitation of this freedom and with this in mind, a method of control is proposed.

A Government anti-cybercrime computer is designed to stake out the virtual address of offshore cyber-casinos. The look-up table of offshore sites is dynamically updated using sophisticated searching algorithms. The computer intercepts PDUs (protocol data units) as they are being routed to an Australian service provider (e.g. AARNET). It then filters these packets for a source reference address and compares the result to a look-up table of known offshore Internet Casino sites. If there is a match, it identifies the destination address. The delay involved with this process could perhaps be disguised as a transmission error in case the punter (or casino operator) had software (we'll call it "bugspray") to detect and intercept and then destroy the packet, create a dummy address, or close a hole in a firewall to counter what follows.

With the knowledge of a source and destination address, a reasonable test is applied using heuristic models.

It then identifies the owner of the destination packet. To save the hassle of trying to match up the destination address to a real person (false I.D.'s etc) a trace is placed on the phone line and the owner of that number identified. If we make it a federal offence to conduct illegal gaming over a phone network it wouldn't matter who was on the line, it would be the onus of the owner of the line to ensure no illegal activity took place.

The computer has the audit trail for evidence, and so automatically withdraws \$50 000 (or whatever the penalty may be) from the bank account of the line owner as a fine. If the money isn't in the bank the Government could automatically take out a mortgage over the person's house or increase their tax payments to ensure the fine was paid (if its all on computer, its all possible without the person even knowing). Finally, depending on the international agreements Australia has with the country of origin it launches a cyber-terrorism attack to bring down the offending provider's site, and sends a message to the punter advising of the felony, that the government now owns their house and to have a nice day.

A less intrusive punishment may be to simply setting off a logic bomb to destroy all data on the receiver's computer. This logic bomb would have arrived in small chunks as data embedded in the graphics images of the casino games. The data finds a vacant memory block, reserves it then

burrows itself into RAM and points subsequent data into sequential addresses. Finally when the program is complete and embedded, after a predetermined number of CPU clock cycles.....the hard disc file allocation table is destroyed + other assorted nasties.

No back to the real world...

5.5. Sting Operation

Setting up a sting operation with a "false" illegal site is another aspect, however there is the issue of entrapment.

5.6. Report "Winston Smith" to the Ministry of Thought

To collect proof of the citizen's crime, law enforcement must principally rely on a family member or other "insider" reporting the activity and providing proof (read George Orwell's novel "1984" for a greater insight into this).

5.7. Use "Scare" Tactics

Make it illegal with huge penalties, go to great pains to prosecute a few "sacrificial lambs" to prove..."It can happen to you."

Again referring to George Orwell's "1984", instill into the people the concept of "Big Brother is Watching You", so don't try or you might get caught.

5.8. Time for a Reality Check

Under a democratic society surveillance of the citizens is difficult to realise in that police cannot randomly access and review electronic transmissions without first obtaining a court order. To make matters more difficult, courts may only authorize wiretaps upon a showing of probable cause that a crime is being committed. However, this type of evidence of illegal Internet activity is difficult to obtain except by wiretap. Now if you now use encryption a wiretap will be useless unless law enforcement has the key necessary to decrypt the communication. "Catch 22".

6. THE GAMES

So if we do decide to regulate Internet gaming to offer credibility in return for control and revenue, what should we look at?

The objectives of gaming being “fair”, “profitable” and “publicly acceptable” are achieved via Government regulation of game functional specifications (refer to Author’s 1993 paper *titled Socially Responsible Introduction of Gaming Machine Technology*) such as:

- percentage of wager returned to the patrons;
- maximum amount able to be wagered;
- size and frequency of prizes;
- accuracy and clarity of game play instructions, and
- outlawing of credit betting (as opposed to betting with a credit card).

The compliance with specific Government requirements in these areas results in games that provide a balance between maximum profit and social considerations by regulating an individual's utility function.

For an offshore operation, there is no way an Australian gaming regulator can police or influence any of the game design criteria. Consequently, as the social welfare issue may be of no concern to an off-shore gaming operator (the burden is borne by someone else’s country), the games may be structured to maximise profit, may employ psychological manipulation techniques, and may not be fair at all! The choice to play or not to play ultimately resides with the individual.

A relationship of mutual causality exists between technology and society. This complex relationship leads to the creation of immediate or first order effects, and higher order effects. For example, if the legislation is structured such that the implementation of gaming technology regulates an individual's utility function (that is, the amount of money an individual may risk), the first order effect is that gambling revenue, consequently taxation, is not maximised. However, if revenue from gambling taxation is maximised, a second order effect may be an escalation in financial difficulties experienced by some gambling members of the community. Which in turn may have a third order effect of a higher crime rate and/or increased costs for community welfare services, or diversion of funds from other forms of business. The net tangible/intangible benefits may therefore be less than the expectation when only first order effects are a variable in the equation.

To 'control' an individual's utility function, one must ultimately restrict the quantity of money that may be wagered on a given device in a given period of time. In achieving this goal, there are a number of factors which must be considered and can be enforced upon a willing participant.

Government sets policy which is translated into technical requirements for gaming equipment. Gaming equipment is then designed and built by gaming companies in accordance with the standards. The equipment is not permitted to be sold or operated in a jurisdiction unless the equipment has been tested and certified as complying with the published standards. Once approved and operational, the gaming equipment must further be operated within an environment of government approved internal controls and operating procedures.

7. CONCLUSION

I make the assertion that it is NOT the gaming technology, but the CONTROL of the technology which can be the difference between entertainment and financial devastation.

We can not reasonably prohibit Internet gaming, we cannot reasonably control the technology. So let us all cooperate to provide incentives for the control of the games. To offer a credible and controlled product that is socially responsible.

Let the global consumer decide!

STEVE TONEGUZZO

MANAGING DIRECTOR

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PROFILE

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**Commercial
Lawyers**

REGULATION OF INTERNET GAMING IN AUSTRALIA

Presentation to Committee 9

International Bar Association

17 September 1998

by Jamie Nettleton

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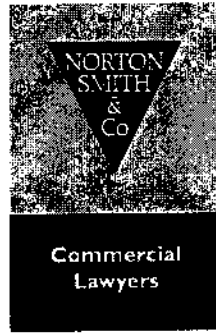
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INTERNET GAMING

1. Introduction

Recent events indicate a clear difference in the approaches being taken by regulators towards the control of gaming over the Internet. The FBI have arrested persons who have marketed Casino games and sports betting services from an Internet site, while two Australian jurisdictions, Queensland and the Australian Capital Territory have introduced recently legislation which seeks to regulate interactive gaming by granting licences to parties who meet specific criteria in the promotion and conduct of those games. Similar legislation is being considered in other Australian jurisdictions, as well as Norfolk Island.

The Australian Acts reflect the attitude of Australian authorities towards gaming on the Internet, namely that it cannot be prohibited (due to the ease with which Internet sites providing gaming services can be set up and the ease with which Australians can access those sites) and that it is a better alternative to attempt to control those activities by granting licences than to prohibit them. This may have the further benefit to Australia of resulting in additional taxation revenue.

The controls introduced by the Queensland Act are consistent with other forms of gaming legislation in Australia; however, it will be a matter of time to see whether the principles behind the legislation are effective in practice.

2. Objectives

Among the key objectives of the regulatory scheme introduced by the legislation, as summarised in Section 3 of the Queensland Act, are the following:

- ▼ to regulate and control gambling accessible from the home involving interactive games;
- ▼ to provide protection for players of interactive games;
- ▼ to provide a basis for implementing an inter-jurisdiction regulatory regime for:
 - the recognition of licences;
 - the regulation and control of interactive gambling in other participating jurisdictions on a cooperative basis;
 - the sharing of taxes on an equitable basis.

Scope of Legislation

As indicated in the objectives, the principle behind the legislation is to regulate and control interactive gambling. Three elements comprise an interactive game, namely:

- ▼ the potential of winning a prize consisting of money or value through the rules of the game;
- ▼ players participate by means of a "telecommunications device" and make a payment to participate in the game; and
- ▼ a winner of a prize may be decided by chance or by skill.

A broad description is given to the term "telecommunications device" in the Queensland Act as it means:

- ▼ a computer adapted for communicating by way of the Internet or another communications network;
- ▼ a television receiver adapted to allow the viewer to transmit information by way of a cable television network or another communications network;
- ▼ a telephone;
- ▼ any other electronic device for communicating at a distance.

Certain games are excluded from the application of the Act, being games authorised under other Queensland legislation applying to racing and betting. Similarly, the ACT legislation introduces the concept of "exemption schemes" for certain games provided by a "licensed provider" to be exempted from some or all of the requirements of the Act.

There is currently some inconsistency in the sections as to the overlap between games caught by existing legislation and games which may be registered in the future under gaming legislation, which could fall under this legislation.

This principle does not appear to reflect fully the principle set out in the working paper which indicated that this legislation was intended to exclude interactive games provided currently by a TAB, a bookmaker or falling within the description of trade promotions.

Indeed, the ACT and Queensland legislation would appear to include trade promotions conducted over the telephone as lotteries. However, the Minister has the right to exclude certain games from certain aspects of the legislation.

Territorial Application of Legislation

Section 8 of each of the ACT and Queensland Acts purports to apply the legislation both within and outside the ACT and Queensland, but indicates that the Act only applies outside the ACT and Queensland to the full extent of the extra-territorial legislative power of the Parliament. This provision reflects the difficulty in extra-territorial application of criminal legislation. (NB The case in Pennsylvania in 1997 where valid service was found to have taken place when proceedings were served on a Pennsylvanian resident for a contravention of Minnesota legislation due to an interactive game being capable of receipt by residents of Minnesota.)

Cooperative Scheme

As contemplated by the draft model on which the legislation is based (the Draft National Regulatory Model for Interactive Home Gambling Products), each of the Queensland and ACT Acts introduces the concept of a cooperative scheme between the relevant jurisdiction and other participating jurisdictions for the regulation and control of interactive gambling. It is interesting to note that these jurisdictions need not be limited to Australia.

In order for recognition to be given to the laws of another jurisdiction, there must exist:

- ▼ corresponding laws;
- ▼ an inter-governmental agreement which provides for:
 - taxation of authorised games on a uniform and consistent basis;
 - collaboration between gaming officials in both jurisdictions;
 - mutual recognition of licences and administrative acts; and
 - sharing of tax revenue.

In order for this cooperative scheme to work, it will be necessary for each jurisdiction to have corresponding legislation. Failure to do so will result in an ineffective scheme, as parties engaged in Internet gaming business activities will seek to establish themselves in the jurisdiction which is most favourable to their business activities. For example, if the Northern Territory provided similar registration, but exerted lesser controls, particularly if a lower rate of tax were payable, it is probable that parties conducting Internet gaming business and wishing to establish themselves in Australia would prefer to do so in the Northern Territory. Currently, Northern Territory has

introduced legislation regulating interactive gambling by Northern Territory based operators; however as the restrictions are contained in individual agreements between the Territory and the relevant operator, it is not possible to consider whether the controls exercised are less strict than the standards set out in the Queensland and the ACT Acts.

Similarly, Norfolk Island has passed a Gaming Act for the regulation of interactive gaming operators and operations. The Act sets out a framework for the regulation of those operations – it is unclear how the system of regulation will work in practice as most of the regulations will be contained in the conditions upon which approval is given by the Norfolk Island authorities to the licensee's systems and procedures.

Authority given to service providers

Authorisation may be given by the Minister to a licensed provider to conduct a particular interactive game. It is interesting to note that, although the authorisation given under the Queensland Act and the ACT Act (as applicable) allows the game to be conducted both within and outside the relevant jurisdiction, the Minister has the power to prohibit a party authorised by the law of a participating jurisdiction from conducting games in that jurisdiction. In the case of the Queensland Act, there appears to be some conflict between Sections 12 and 29, in relation to the conduct of a game which is approved in another jurisdiction but is subject to a prohibition in Queensland.

Due to the nature of the Internet, it will be interesting to see how effect can be given to such a prohibition in practice. This is due to the transient nature of the Internet and players, who may use a lap-top to play games in various locations throughout Australia.

Prohibition on Unauthorised Interactive Gambling

Section 16(2) of the Queensland Act contains a broad prohibition on any person in Queensland from participating in, encouraging or facilitating participation by another in an interactive game knowing that the game is not an authorised game. A similar restriction is contained in Section 14(2) of the ACT Act, which restricts any person in the ACT from aiding or abetting the participation by another person in an interactive game knowing that it is not an authorised game.

Due to the absence of definitions of "encourage" or "facilitate" and the broad scope of "aid and abet", these sections are of potentially broad application and may catch ISPs. ISPs may be in an extremely difficult position due to this prohibition, since they may be aware that a game is not authorised, and may in fact be providing the facilities, but will

not be in a position to stop the game being played. Does this mean that ISPs will be liable in these circumstances?

Registration of Players

Under the Queensland and the ACT legislation, no player can be allowed to participate in an authorised game unless they are first registered. This complements other restrictions on the participation by a player in an interactive game knowing that it is not an authorised game. For registration to take place, evidence must be given by the prospective player of his/her:

- ▼ identity; and
- ▼ place of residence.

In addition, that person must confirm that they are at least 18 years old.

Registration cannot take place until the player's identity has been confirmed by a control system implemented by the service provider.

A potential conflict exists in relation to this mechanism due to the difficulty in obtaining confirmation without breaching a player's privacy. Appropriately worded consents will need to be executed by each player.

Further, it would appear that the manner in obtaining confirmation of a person's identity is inconsistent with the nature of the medium on which the games will be played. It is probable that most service providers will require hard copy evidence from a prospective player.

In addition, no player can be allowed to participate unless they have first established an account, which must contain sufficient funds to cover wagers made. Some flexibility is included in the legislation to indicate the manner in which funds may be provided to cover the amount of the wager - these will need to be reviewed in due course.

Finally, players are required to comply with the rules of the game as notified to the player. This will be a difficult provision for service providers to enforce. Some of the difficulties recognised in seeking to enforce shrink wrap licences will be relevant here. How will the service provider be aware that the player has acknowledged the rules? How will the service provider be aware that the player understands the rules and particularly that s/he will be bound by contract by the rules?

It is unclear whether similar rules will be enforced by the gaming authorities in each of the Northern Territory and Norfolk Island as the operation of the legislation is not clear from its face.

Advertisement of Authorised Games

Among the activities which are allowed to be conducted by a service provider are the advertisement and promotion of an authorised game. However, it is not possible for advertisements to be made which indicate that specific premises are available for playing interactive games.

The scope of this prohibition is unclear. For example, does it prohibit the operator of an Internet café from indicating that Internet services are available at its premises or does the restriction only apply where reference is made to an interactive game being capable of being played at those premises?

The legislation does not follow the suggestion made in the working paper that an industry code be developed. This is disappointing as it leaves great discretion in the hands of the regulators and uncertainty as to when that discretion might be exercised.

Discretion of Regulators

As indicated above, very broad powers are given to the authorities under each Act. In addition to having the right to refuse to grant an application, the authorities have the right to impose conditions relating to the operation of games, or to the licence granted, and to suspend or cancel a licence. The grounds of appeal given in respect of actions which may affect the livelihood of the service provider are limited.

Key Persons

Various persons are defined in the ACT and Queensland Acts to be key persons, namely persons who act in a managerial position or have certain control over the operations of a licensed provider. Again, discretion is given to the Department as to who may be a key person. Further, under the Queensland Act, the Chief Executive may require a person who he believes to be a key person to apply for a key person licence or to terminate the relevant relationship within 7 days of receiving the notice.

Limited scope exists for appealing against the decision of the Chief Executive or the Commissioner (as applicable).

Liability in Tax

An interactive gambling tax is to be paid by a licensed provider for each authorised game conducted by it. This is to be payable at a rate fixed by regulation and may have regard to the rates of tax payable under laws of other jurisdictions.

It is unclear whether these regulations will be consistent with the proposals set out in the draft Report. It is hoped that they will be consistent with the Report, namely that taxation will be imposed first by the jurisdiction in which the player is resident. Particular uncertainty exists where a state or territory does not participate in the national regime.

Other Issues

The premises from which a licensed provider conducts business will need to be approved.

No licensed provider can provide credit.

Controls are placed in relation to the operation of inactive accounts.

Persons can declare themselves as being "problem gamblers" by written notice to a licensed provider and can ban themselves or limit their bets. A similar application may be made in relation to specified persons by third parties.

Approval is required for agreements to be entered into by a licensed provider under which a percentage or share of amounts received by the licensed provider from his business are payable.

Licensed providers are required to refund the amount of wagers paid by players if an authorised game is interrupted by a failure of an operating or telecommunications system. Notification of interruptions of this type must be made to the chief executive.

All equipment to be used for the conduct of an authorised game must be approved.

3. Other Legal Issues

Conflicts of Laws

In considering whether Australian law applies to an Internet gaming transaction, general rules relating to conflicts of laws apply. Generally, effect will be given by Australian courts to an express choice of law set out in a contract. Exceptions to this

rule will apply where the courts in the country in which proceedings are brought consider that that choice was inappropriate.

Even where there may be an express choice of law, and although the law chosen is not Australian, such choice does not necessarily exclude the application of the Trade Practices Act (Commonwealth). For example by way of analogy, the Trade Practices Act has been deemed to apply to mail order sales from outside Australia to Australian residents.

However difficulties usually arise where there is no express choice of law in the relevant contract. In these circumstances, the contract will usually be interpreted in accordance with the law with which the contract has its closest and most real connection. This can be determined quite arbitrarily by the courts; however, the nature and subject matter of the contract and the manner in which the contract was reached can be relevant.

In cases involving Internet gaming transactions, the general principles relating to offer and acceptance (the laws applying to contract) are unclear. Which party is making an offer to enter into the contract? Where is it accepted?

It can be seen that these issues are very difficult to determine.

Enforcement - Unauthorised Providers

In any event, irrespective of which law applies in interpreting the contract, difficult issues arise in relation to enforcement. Some countries are well-known for taking the view that their laws are enforceable outside the country. In addition, some countries take the view that acts committed by their residents overseas should be treated as if they were committed in their home jurisdiction. A number of US examples immediately come to mind.

Accordingly, it can be seen that substantial difficulties will arise in relation to attempts by Australian jurisdictions to enforce their Internet gaming laws against Internet gaming providers resident in other jurisdictions. Although steps may be taken to cause authorised service providers (being overseas Internet gaming services) to submit to the relevant Australian jurisdiction (and possibly lodge a bond in support of the obligations being given to the relevant government), difficulties will exist in the case of most of the current Internet casinos which are capable of being set up, and being dissolved, rapidly.

Enforcement - Authorised Providers

A similar issue is also likely to arise in relation to the enforcement of authorised gaming transactions. The general principle of common law is that gaming contracts are invalid as being contrary to public policy save where permitted by law. Accordingly, even if a licence has been granted to an Internet gaming service provider, difficulties may exist in recovering the proceeds of bets from parties resident in other jurisdictions. Although every care may have been taken by the Internet gaming service provider to ensure that monies are advanced and banked before a bet is placed by the relevant player, uncertainty exists under the rules of the relevant jurisdiction as to whether that player is required to honour the payment. Indeed, an issue arises under several jurisdictions in the United States where the placement of a bet over the Internet contravenes local legislation.

Many parties have expressed concern to me over the impact which contravention of a law in the United States might have on a licence in Australia. For example, it is well known that one of the conditions imposed on holders of gaming licences is that they comply with all relevant laws. If a prosecution is brought under the law of another jurisdiction, say Wisconsin against the Internet gaming service provider, what impact does this have on the Australian licence?

Similar issues arise under the laws of various American States in relation to statements made in connection with an Internet gaming service that it complies with relevant laws. Care needs to be taken in the manner in which a licence is referred to as part of the relevant game to ensure that a false representation is not made under the relevant law. Further, it may be appropriate for a disclaimer to be entered on a screen when the site is first accessed to make it clear that the relevant game is not permitted under the laws of the relevant jurisdiction. It would also be appropriate for the software to be programmed to ensure that residents of a specific jurisdiction are barred from playing the relevant game.

However, such a disclaimer may not be sufficient to prevent a contravention of legislation in a relevant jurisdiction taking place as it may be relatively simple for the player to evade such a restriction, for example, by utilising a bank account in another State.

In any event, reliance should not be placed on the attitude privately stated by various US prosecutors, namely "There is nothing we can do about people that operate gaming business outside the US". Even though this may be the case, the US authorities have

indicated their vigilance in prosecuting parties involved in Internet gaming. This can be seen by the recent prosecutions brought in New York relating to the conduct of Caribbean Casinos.

Pressure from existing licensees

It has not yet been clarified how the Australian regulation will work in practice, particularly as most jurisdictions have conferred exclusivity to a lesser or greater degree on licensees in that state or territory. Does this mean that no licences will be granted to operate Internet casinos in a state? Certainly, the existing licenseeholder is likely to resist strongly the possibility of competition being allowed on its doorstep in a manner which may conflict with its licence.

Indeed, one of the prime drivers of the regulation of internet gaming in Australia, David Ford the Chief Executive of Queensland Gaming Authority, has indicated recently that one of the principal difficulties in achieving consistent regulation throughout Australia has been how to deal with the exclusivities.

Conflict with Internet

Inherent in the use of the Internet is a lack of regulation, flexibility and ability to change form and medium. Accordingly, notwithstanding the objective of the promoters of the national regulatory model, the only parties who will be regulated by the legislation are those who choose to come within the regime which it introduces. Otherwise, difficulties will exist, particularly due to the periods that will elapse in obtaining a licence, changing the product etc.

Miscellaneous

Other issues occurring to me include:

- ▼ the incongruity that will be involved in obtaining confirmation from a player of identity etc before allowing participation, since hard copy materials (ie. drivers licence) will need to be seen.
- ▼ all equipment to be used by a service provider will need to be approved. This covers anything that can be used or suitable for use in the conduct of an authorised game. Phew!
- ▼ what happens where the equipment is used to provide other content and gaming is only one application. To what extent do the regulations apply?

- ▼ the form of consent required from prospective players to enable them to participate in a game will need to be worded carefully, particularly to ensure that the service provider can make all necessary enquiries relating to that player. This raises concerns under the laws relating to privacy, which differ from jurisdiction to jurisdiction.

4. Where from Here?

Australia is at the forefront of regulation of Internet gaming through the passing of legislation in various parliaments. On the assumption that this legislation (and corresponding legislation proceeds in other States and Territories), Australia will be the only jurisdiction in which formal regulation exists.

The full nature and scope of the legislation is uncertain as numerous gaps are left to be filled by regulations. In any event, no certainty can be achieved in the regulations unless a complete national approach is taken. In other words, if any jurisdiction in Australia decides to "go it alone", the effectiveness of the regulation in other States and Territories will be severely prejudiced. It is to be hoped that a uniform approach can be maintained.

Since the introduction of the Queensland bill, there have been a number of developments relating to the introduction of legislation regulating Internet gaming in Australia. The current position is as follows:

▼ Northern Territory

A bill was introduced into the Northern Territory Parliament on 28 April. The bill which has been introduced is very limited and sets out in very general terms the right of the Minister to grant licences to conduct an Internet gaming business. Internet Gaming Business is defined very broadly, and includes conducting a lottery, conducting a game and the sale of tickets in a lottery or foreign lottery by means of the Internet. Further, the Act provides that the Minister may enter into agreements with parties relating to the conduct by that party of an Internet gaming business in or from the Northern Territory setting out the manner in which that business may be conducted.

From the second reading speech, which was given at the time that the bill was introduced, little clarification is given on the purpose of the legislation. However, it makes it clear that the position of the Northern Territory relating to the regulation of interactive gaming has not yet been finalised.

In addition, like the Queensland legislation, the draft bill provides that most of the terms which will apply to the grant of interactive gaming licences in the Northern Territory will be set out in regulations or the terms of an agreement to be entered into with the relevant licensee. Finally, it is interesting to note the Minister's statement in relation to the national model where he states: "If the Territory decides to adopt the draft national model, the key principles and requirements contained in the national regulatory model may be incorporated into the licence conditions or applied as terms of the agreement."

▼ **Other States**

As far as I am aware, no other legislation has been introduced yet relating to the regulation of interactive gaming. However, Western Australia has introduced a bill which allows instant lottery games tickets to be purchased over the Internet, while New South Wales has indicated its intentions to follow the national model.

Finally, it is unclear how Tasmania intends to proceed. Our enquiry revealed that Tasmania does not intend to introduce legislation, but merely to permit the existing casino licence holder to operate an Internet casino. Does this mean that Tasmania will not implement legislation in accordance with the national model? This is an issue that will require clarification, particularly in respect of certain aspects of the national model, such as tax, which needs consistency in regulation throughout Australia.

On the assumption that the Australian legislation proceeds to proclamation, a considerable period will elapse before any registrations of authorised service providers take place due to the period which will elapse before the relevant probity checks are completed. During this period, I have no doubt that substantial discussion will take place about the diametrically opposed views to Internet gaming regulation being taken by authorities in Australia and in other jurisdictions, such as the United States. If the Kyl Bill proceeds to legislation, numerous cross-jurisdictional difficulties are likely to arise.

As a result, it will be interesting to see whether the Australian legislation can be effective in light of the restrictive nature of the legislation in the United States, which will prohibit any person being engaged in a business of betting or wagering using a communications facility for the transaction or receipt in foreign commerce of bets or wagers. Will the Kyl legislation prevent American residents from being involved in

Internet gaming? I doubt it. However, there must also be some doubt whether those persons would be prepared to submit to the regulatory requirements introduced by the Australian legislation.

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