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The Truth about Online Gambling

Why It Is *not* the Wild West

By Michelle Minton*

On Christmas morning 1869, in the dustbowl town of Towash, Texas, the patrons of Jackie’s Saloon heard the ringing of spurs against the wooden entrance steps and turned to see a tall man with a boyish face casually slide through the swinging doors. John Wesley Hardin, the 16-year-old son of a Confederate preacher, raised his gun with the grace of a portrait artist and painted the back wall of the bar with the blood of James Bradley—over a game of cards.

In the old West, this may have been a common way to ensure honesty at cards. Yet, as alien as that world seems to us today, some pundits and members of Congress suggest that things have not changed much since those gun-sliding days.

Today, gambling is legal in some form in all but two states and an overwhelming majority of Americans enjoy gambling—or have at least gambled once—and they do so in ever increasing numbers on the Internet. Dozens, if not hundreds, of websites let Americans place legal bets on everything from the spin of a virtual roulette wheel to the outcome of a horse race.

As the popularity of online gambling has grown, so too has the urge among some politicians and regulators who see it as a problem to “do something” about it. Fears about online gambling range from underage and problem gamblers accessing gaming sites to money laundering and threats to financial privacy.

Preying on Fears. Contrary to such fear mongering, recent examples of online gaming “scandals” have been isolated incidents, and are not symptomatic of a corrupt system. In fact, gambling on the Internet is safer in many respects than gambling in the real world.

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Even so, such fears have resulted in repeated attempts to either limit or prohibit Americans' ability to gamble online, as some members of Congress portray Internet gambling as a lawless activity involving only cheats and victims. Most attempts by Congress over the past 10 years to limit or ban online gambling have been unsuccessful, but some recent high-profile scandals at gaming sites have revived such efforts.¹

- In 2008, employees of the popular online gambling platform Absolute poker.com hacked the site's software and created "super-user" accounts that allowed them to cheat players out of millions of dollars over a two-year period before other players caught them.²
- In 2007, the Internet payment service Nettle PLC withheld millions in payments—almost all from gamblers—due to legal wrangling with the Department of Justice and the Internal Revenue Service and the arrest of some of its principals. The CEO eventually apologized and gamblers received their money back.³
- In separate incidents, two websites, Betonsports.com and Hampton Casino, refused to pay out to winners of their games. Both cases were eventually settled.
- In the case of the London-based BetonSports, the company agreed to no longer serve U.S. costumers. In 2003, Hampton Casino settled by paying the winner of a \$1.3-million pot.⁴

All of these scandals involved accusations of fraud that, if proven, would be punishable under a variety of existing laws in the United States and other countries. The question is not whether scandals can happen, but how society can best deal with them. A "60 Minutes" exposé of the Absolute poker.com scandal explicitly compared online gambling to the "Wild West" and suggested that it exists outside of any effective regulation from governments, markets, or anybody else—and is illegal to boot.⁵ Certainly, online gambling may entail certain unique risks—one cannot hack the "software" of a *human* roulette dealer—but the evidence to date does not show that online gaming poses extraordinary risks to financial privacy.

With a few exceptions, gambling is legal in the United States. It is neither "unregulated" nor particularly vulnerable to cheaters. While online gambling carries risks, as does all gambling, it is not an exceptionally risky activity likely to be exploited by criminals. The corrupt or unscrupulous behavior of a few participants is not a valid basis for rebuking the entire industry. However, legislators often hold up these rare cases as evidence of widespread lawlessness and thus justification for laws that would ban or severely limit Americans' ability to gamble online.

Online Gambling Is Legal. Gambling online for money is legal in the United States, with some restrictions on sports betting discussed below. People who fall victim to fraud in online gambling operations are not lawbreakers. Internet gambling does not break any federal law and only one state in the union, Washington, expressly bans it for state residents.⁶ Three federal laws regulate Internet gambling.

- The Wire Act limits interstate transmission of sporting results for the purpose of betting.

- The Professional and Amateur Sports Protection Act (PASPA) bars certain states from legalizing sports gambling.
- The Unlawful Internet Gambling Enforcement Act (UIGEA) does not directly restrict gambling but instead deputizes banks, credit unions, and credit card companies to block illegal online gaming transactions.⁷

None of these laws—and no state laws outside of Washington—bar individuals from placing non-sports bets online. Sports betting online, except on animal racing, is illegal everywhere except in states that offered any form of legal sports betting before PASPA passed in 1991. Almost all other online gambling is legal.

While UIGEA—which does not yet have implementing regulations in force—makes it illegal for banks and other credit processing companies to transfer money related to *unlawful* Internet wagering, it does not prohibit online gambling *per se*.

However, UIGEA’s ambiguity—it lacks a definition for what constitutes “unlawful Internet gambling”—will create a *de facto* ban on Internet wagering in the United States when it goes into effect by making it prohibitively risky and expensive for credit processing agencies to determine what types of funds they can handle under the new law. To avoid risking fines or investigation, credit processing companies would simply refuse to handle any funds that could potentially be linked to unlawful gambling.

Internet Casinos are not Unregulated. While Internet gambling is less regulated than other industries in America—and less regulated in the U.S. than it is in Europe—reports of Internet gambling as a lawless “Wild West” are a far cry from reality. In reality, this multi-billion dollar industry is a well-oiled, well-maintained, and, for the most part, highly scrutinized entertainment platform.

As a result of gambling’s unique development in America, there is no set federal regulator or official body tasked with overseeing online gambling. However, that does not mean that Internet gambling faces *no* government regulation. Many independently operated rating agencies offer certificates for sites that meet standards of security, legality (meaning they guarantee that age-limits are strictly upheld), and fairness. Many of these rating organizations also require Internet casinos to participate in their dispute mediation services in the event that a player feels cheated. These ratings are a viable and effective way for consumers to ensure that their rights are respected in the realm of online gaming.

All of the online casinos where Americans may play are physically housed in other countries (Costa Rica, Barbuda, and Antigua happily welcome online casinos). This means that they fall under the jurisdiction of those other countries, many of which do have some regulatory oversight of their activities. These sites’ increasing popularity in the U.S. has increased the pressure for the American government to “do something” about online gambling, and created an incentive for new online casinos to keep their real-world addresses in other countries, thereby eschewing uncertain regulations.

Regulators come in two basic forms: government and private. The existence of government regulation does not equate with security. For example, the casino at the center of the Absolutepoker.com scandal fell under government regulation. Its regulator was the Kahnawake Gaming Commission, the regulatory body of the Kahnawake Mohawk Indian tribe in Western Canada.⁸ Foreign governments directly regulate other casinos. England maintains its own system for regulating online gambling.⁹ Bermuda—well known for its strong financial regulation—is strongly considering creating a system similar to England’s.¹⁰

Non-governmental agencies also regulate online gaming. The largest, eCogra, certifies over 100 sites for “fair gaming, player protection and responsible operator conduct.”¹¹ No one seems to have challenged eCogra’s assertion that there has never been a scandal involving one of its certified sites. According to a recent joint study by eCogra and the European Gaming and Betting Authority, comparing independent regulators to some of Europe’s government-run regulatory regimes, independent organizations like eCogra did just as well, and 24 percent of the time independent regulators exceeded the standards of the government monopolies.¹²

In short, a variety of regulators exist for online gambling and nearly all widely known sites submit to either a government regulator or a private agency like eCogra.

Cheating Online Is Hard. It is far easier to cheat in real-world casinos than it is online. Online cheating requires more technical skill, is easier to track, and is harder to get away with than cheating in the real world.

In the real world, cheating can take a variety of forms. For example, players can use marked cards, tamper with gambling devices, pay off dealers, move bets so they “pay off” in certain table games, stack a game with confederates, and employ other methods to otherwise goose the odds in their own favor. Most of these tactics are literally impossible to carry out in the virtual world.

To cheat at an online game, a player almost always needs to manipulate the software used to play the game. This is exactly what happened in the Absolutepoker.com scandal. Such inside jobs notwithstanding, many routes for cheating are closed to online players.

Cheating is also easier to track online. If a casino operator suspects that a player may be cheating, it is limited as to how much evidence it can collect—utilizing only dealer observation and video cameras. The “eye in the sky” (casino overhead camera) is only effective at watching players already suspected as cheaters and even then it is very difficult to use the video to actually prove that a player is cheating.

By comparison, it is far easier to spot, follow, and confirm cheating in online casinos by tracking all of the hands for a user attached to a certain IP address. In addition, Internet casino operators can write computer software to sound the alarm if pattern of play appears suspicious, even if no other player has noticed. And, unlike real world casino operators, who can only monitor a player’s activity in its own casino, Internet casinos can

coordinate and track a user's IP address to monitor his activities across multiple Internet gaming platforms.

Conclusion. Online gambling faces challenges common to any growing industry. Gambling online does, in many cases, imply unique threats and risks that do not apply in the “real” world—including computer viruses and adware. But online gambling is not illegal, does not take place in a lawless “Wild West” setting, and does not provide a particularly fertile ground for cheating. Those who gamble online need to be careful just as those who gamble in the real world need to be.

The market and rating agencies do an increasingly effective job of ensuring consumer safety. Those who want to make online gambling safer will do best to review the ways in which government interference in economic activity creates openings for unethical operators, rather than attempt to squash all activity. John Wesley Hardin is not lurking online.

Notes

¹ Until Congress passed what was essentially bank legislation, the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006, most attempts to limit online gambling at the federal level had failed. Such attempts include Bob Goodlatte's (R-VA) H.R. 4777, the Internet Gambling Prohibition Act in February 2006 and Jim Leach's (R-IA) Unlawful Internet Gambling Enforcement Act of 2005.

² Gilbert M. Gaul, “Players Gamble on Honesty, Security of Internet Betting,” *Washington Post*, November 30, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/11/29/AR2008112901679_pf.html.

³ Gambling911.com, “NetTeller Founders Arrested in U.S.,” January 15, 2007, <http://www.gambling911.com/NETeller-Founders-Arrested-011507.html>.

⁴ Gambling911.com, “Top Five Gambling Scandals of All Time,” <http://www.gambling911.com/Top-5-Online-Gambling-Scandals-102107.html>.

⁵ 60 Minutes, “The Cheaters,” November 30, 2008.

⁶ Since 2006, Washington State residents engaging in most types of wagering on the Internet can be prosecuted as Class C felons, which could result in jail time of up to five years in prison and a \$10,000 fine.

⁷ The Professional and Amateur Sports Protection act is 26 USC 3701, The Wire Act is 18 U.S.C. § 1084 and UIGEA is 31 U.S.C. § 5361-5367.

⁸ Like similar tribal gaming overseers in the United States, the Commission has semi-sovereign rights to oversee gaming within its tribal territory. Indian gaming operators are, as a class, skilled and sophisticated. In fact, the single largest casino in the world, measured by gaming space, Connecticut's Fox Woods Resort Casino, is tribally run and regulated.

⁹ See e.g. Gambling Commission (U.K.), <http://www.gamblingcommission.gov.uk/Client/detail.asp?ContentId=222>.

¹⁰ Gambling911.com, “Bermuda Mulls Online Gambling Option,” <http://www.gambling911.com/gambling-news/bermuda-mulls-online-gambling-option-103008.html>.

¹¹ Ecogra.com, “Approved Sites,” <http://www.ecogra.org/approved.aspx?OP=P>.

¹² European Gambling and Betting Association, “EGBA Standards,” October 2008, http://www.egba.eu/pdf/EGBA_Standards_ENG.pdf.