



## **Committee on the Judiciary Hearing**

### **“Establishing Consistent Enforcement Policies in the Context of Online Wagers”**

**November 14, 2007**

At the House Committee on the Judiciary hearing, "Establishing Consistent Enforcement Policies in the Context of Online Wagers," top experts called for the United States to reverse its policies prohibiting Internet gambling. The witnesses argued that the Unlawful Internet Gambling Enforcement Act (UIGEA) violates the American principles of personal freedom and individual liberty. They also explained how the ban on Internet gambling violates U.S. treaty obligations with other countries and exposes U.S. businesses to potential criminal retaliation overseas.

Expert testimony at the hearing was provided by Representative Shelley Berkley (D-NV), professional poker player Annie Duke, New York University Law School professor Joseph Weiler and Michael Colopy, a representative of Aristotle Inc., a leading provider of verification services for child protection online.

#### **Reversing U.S. Policies on Internet Gambling**

Representative Berkeley provided testimony on the need for Congress to change its policies related to Internet gambling and protect the million of Americans that continue to gamble online despite passage of the Unlawful Internet Gambling Enforcement Act (UIGEA).

Interestingly, and not surprisingly, the Honorable Catherine Hanaway, United States Attorney, Eastern District of Missouri, U.S. Department of Justice, reiterated the Department of Justice view that all forms of online gambling are illegal. Also, when questioned by Representative Howard Coble (R-NC) if there was any evidence of Internet gaming sites laundering money for terrorist financing Ms. Hanaway responded unequivocally that there is no evidence to that effect.

#### **Preserving American Freedoms and States Rights**

Professional poker player Annie Duke testified that Americans deserve the right to determine whether to gamble online without government intrusion.

“What's at stake here is the right of individual Americans to do what they want in the privacy of their homes without the intrusion of the government,” said Duke.

Answering questions from Committee members, Duke affirmed that the Internet Gambling Regulation and Enforcement Act, legislation introduced by Representative Barney Frank (D-MA), would allow individual states to maintain full control over online gambling in their jurisdiction, including determining allowable types of online gambling

activities, how online gambling operators would be taxed and how the industry would be regulated.

### **Resolving the WTO Internet Gambling Dispute**

Joseph Weiler, a professor of law at the New York University School of Law and an expert in the law of the WTO, provided testimony that the U.S. is in violation of its WTO trade agreements around Internet gambling and should seek to bring itself into compliance.

“The U.S. bans online gambling offered by overseas operators even though it made treaty commitments to allow it and even though it allows online wagering domestically, including for horse racing,” said Weiler. “We should bring our law and conduct into compliance with our international legal obligations . . . . How would we feel if China prosecuted and imprisoned American businessman for engaging in commerce in China that the government there decided to ban despite its treaty obligations?”

### **Combating Compulsive and Underage Gambling**

Michael Colopy, a representative of Aristotle Inc., a leading provider of verification services for child protection online, provided testimony on the opportunity to use technology and controls available on the Internet to combat compulsive and underage gambling.

“Online age and ID verification has matured as a needed solution such that any merchant may do online what is routinely done at stores every day across America,” said Colopy. “In fact, as ever more efficient technologies and databases have been developed, online transactions have become in many instances faster and less risky than the visual driver’s license scans that suffice for alcohol or cigarette purchases in America’s neighborhood convenience stores, restaurants and bars.”

Colopy added that a self-exclusion list program is an example of a solution to keep compulsive gamblers from wagering online. Through a central self-exclusion list, individuals will be able to put their own names on a confidential list of those who do not wish to be solicited or allowed to open an account with a casino.

### **Media Coverage of the Hearing**

The following articles, attached for your review, provide additional information and perspectives on the hearing:

- Lawmaker raps Internet-gambling enforcement, *Washington Post*, November 14, 2007
- Internet gambling ban stirs feud, *St. Louis Post-Dispatch*, November 15, 2007
- Lawmakers Hear Protests Over Internet Gambling Ban, InternetNews.com, November 15, 2007
- Lawmakers push for easing Internet bet ban, *Las Vegas Review-Journal*, November 20, 2007

## Lawmaker raps Internet-gambling enforcement

By Peter Kaplan  
November 14, 2007

WASHINGTON (Reuters) - The Democratic head of the House Judiciary Committee voiced frustration on Wednesday about what he said are disparities in the enforcement of U.S. Internet gambling laws.

Chairman John Conyers questioned "the selective nature" of Internet gambling enforcement and said a ban enacted by lawmakers last year could end up hurting U.S. relations overseas.

"Continuing with the same old failed policies for the sake of feel-good politics doesn't make sense," Conyers, of Michigan, said at a hearing on the issue.

Conyers did not signal whether he supports any changes to the current law. A bill introduced by House Financial Services Committee Chairman Rep. Barney Frank, of Massachusetts, would roll back the ban on Internet gambling that was enacted by Congress last year.

However, Conyers and several other lawmakers on the committee pressed officials from the Justice Department and Treasury Department at the hearing to explain why they are cracking down on some forms of Internet gambling but not others.

As part of the crackdown, two founders of payments processor NETeller Plc were arrested in January. In May online gambling operator BETonSPORTS Plc, pleaded guilty to U.S. racketeering charges and agreed to cooperate in a case against the company's founder and other co-defendants.

The Justice Department interprets a decades-old U.S. law, known as the Wire Act, as banning all forms of gambling over the Internet, although the gambling industry has argued the law only bars sports betting.

At Wednesday's hearing, Conyers and other committee members questioned why the Justice Department had not sought to prosecute other forms of Internet gambling, such as online horse-racing.

"To cherry pick ... is what I find to be particularly intellectually dishonest," said Rep. Robert Wexler, a Florida Democrat who has introduced a bill that would exempt poker and some other games from the Internet gambling ban.

Conyers also wanted to know why horse-racing and some other forms of gambling "will continue to proceed unfettered" under new regulations proposed last month by the Treasury Department and the Federal Reserve.

The regulations were drawn up to enforce a law enacted by Congress last year that makes it illegal for banks and credit card companies to make payments to online gambling sites.

The ban has been closely monitored by investors in some British-based gaming companies, such as Partygaming Plc and 888 Holdings Plc.

Conyers also echoed critics of the new Internet gambling ban, saying it could run afoul of the United States' international obligations.

European trade officials argue that the online gambling prohibitions discriminate against European companies that want to offer online gambling services in the U.S. market.

The World Trade Organization in March found U.S. prohibitions on online betting illegal in a complaint filed by Antigua and Barbuda several years ago. However, U.S. officials have said they will maintain the ban anyway and retroactively remove gambling services from its market-opening commitments.



## Internet gambling ban stirs feud

By Megan Boehnke  
November 15, 2007

WASHINGTON — A year after Congress passed a ban on Internet gambling, professional poker players and online software experts squared off against the Justice Department and gambling critics on Wednesday as a House committee examined how the law is working.

Worries that the ban is receiving "selective enforcement" led to the Judiciary Committee hearing Wednesday, where U.S. Attorney Catherine Hanaway of St. Louis defended the Justice Department's prosecutions. She said the department considers all forms of online betting illegal and dangerous, posing an "unacceptable risk" of gambling by minors and compulsive bettors.

But Chairman John Conyers, D-Mich., said members have received complaints that exceptions in the law for some forms of gambling, such as horse racing, led him and others to ask whether the ban is fair.

The law made it illegal to transfer money from financial institutions to Internet gambling sites and includes exceptions for horse racing, state lotteries and some fantasy sports.

New regulations proposed by the Treasury Department as part of the ban would allow those forms of online gambling to continue, Conyers said.

"Continuing with the same old failed policies for the sake of feel-good politics doesn't make sense," he said.

Supporters of the law pointed to its overwhelming 317-93 passage in the House and cited social problems associated with gambling addictions.

Thomas McClusky, a vice president of the Family Research Council, told the story of a 19-year-old Lehigh University student so addicted to online poker that he robbed a bank to settle his debt. Greg Hogan, whose father is a minister in Barberton, Ohio, is now serving a prison sentence of 22 months to 10 years.

"His family and other families continue to suffer as those they love become obsessed with Internet gambling," McClusky said. "When you add the anonymity of the Internet, the troubles caused by gambling increase exponentially."

Opponents of the ban say those cases are extremes, not the norm for most online gamblers.

Gambling opponents unfairly point to addicts and underage bettors, contended Annie

Duke, the highest female money winner in tournament poker history.

Duke, who represented the Poker Player's Alliance, pointed to licensing and regulations of online gambling as a "less intrusive" means of thwarting the social problems.

"Frankly, if the government is going to ban every activity that can lead to harmful compulsion, the government is going to have to ban nearly every activity," she said. "Shopping, day trading, sex, chocolate, even drinking water."

As the debate continues, it's unclear whether there will be any challenges to the law or the Treasury Department's regulations, which detail the kinds of financial transactions that are illegal.

In the meantime, Hanaway said the Justice Department will continue prosecuting Internet gambling violators, and while the government has ample authority to make cases against the law-breakers without last year's ban, she wouldn't recommend scrapping it.



## Lawmakers Hear Protests Over Internet Gambling Ban

By Sean Gallagher  
November 15, 2007

WASHINGTON, D.C. -- The House Judiciary Committee listened to testimony yesterday from Justice Department representatives, outside experts and lobbying groups in an effort to confront the legal tangles surrounding Internet gambling.

The committee's hearing comes on the heels of last year's passage of the Unlawful Internet Gaming Enforcement Act (UIGEA), which prompted a number of further bills that that would, in various ways, legalize and regulate Internet gambling.

The UIGEA, which came as part of a maritime port security measure, places the onus on financial institutions to ensure that electronic cash and credit card transactions are not used to pay for wagering debts or payouts.

Speaking yesterday the Judiciary hearing, pro poker player Annie Duke blasted the UIGEA, which she said, "essentially deputizes financial institutions as the morality police."

"More than any other value, America is supposed to be about freedom," said Duke, who spoke on behalf of the Poker Players Alliance, an advocacy group. "Except where one's actions directly and necessarily harm another person's life, liberty or property, government in America is supposed to leave the citizenry alone. Examples of Congress straying from this principle are legion, but few are as egregious" as the UIGEA.

Criticism for the act also came yesterday from the Justice Department, which has been aggressive in applying existing laws to Internet gaming. Catherine Hanaway, U.S. District Attorney for eastern Missouri, testified on behalf of the department that adequate legislation banning Internet gambling is already on the books.

"While many of the laws do not mention Internet gambling [specifically], we believe it to be covered," she said.

Enforcement of existing legislation has become a hot topic unto itself for legislators and the Bush administration. In recent months, the administration's enforcement of current laws to target online gambling -- particularly the prosecution of London-based BetOnSports PLC -- has escalated into a major showdown within the World Trade Organization.

Other countries have since won judgments in the WTO against the U.S. for failing to live up to its treaty obligations, which they charge should allow foreign gaming companies to offer services to American customers.

However, Hanaway said challenges to the U.S.'s ability to use existing law to limit online gambling remain specious to date.

"There have been motions saying our prosecution violates WTO treaties," Hanaway said during questioning by Rep. John Conyers (D-Mich.), the Judiciary Committee chairman. "Individuals as private citizens don't have standing [to make those motions] ... This Congress said nothing in these treaties would overturn existing laws of the U.S."

But Joseph Weiler, head of New York University's Hauser Global Law School, testified before the committee that there is "no question in anybody's mind that the [U.S.] ban on Internet gambling is a violation of the U.S.'s legal international obligations."

"The executive branch continues to threaten prosecution of executives [of foreign companies] for activities that the U.S. guaranteed its trade partners that it would [allow]," he said. "This is not a good example of how we conduct ourselves in the international community."

He added that the withdrawal of the U.S.'s commitments regarding Internet betting would set a dangerous precedent, and could place at risk American interests in other industries overseas.

Likewise, Rep. Shelley Berkley (D-Nev.) also fired at policy regarding existing Internet gambling regulations.

"The WTO has ruled that our laws unfairly discriminate," Berkley said. Should the administration withdraw its WTO commitments on gambling to continue prosecuting international betting sites, a move would seem like "the trade equivalent of taking our ball and going home," she said.

The Judiciary Committee is weighing a number of other bills that would alter current Internet gambling laws. Rep. Barney Frank (D-Mass.) introduced a bill in April that would allow licensed Internet gambling operations, and Rep. Robert Wexler (R-Fl.) introduced a measure exempting poker and other "skill games" from the scope of federal prohibition. Both these bills have yet to be reported out of the committee.

Nevertheless, the possibility of lawmakers rolling back prohibitions already affecting Internet gambling seems unlikely, if rhetoric from Judiciary Committee leadership is any indication.

For instance, Conyers, the committee's chairman, opened yesterday's hearing by calling gambling a "social evil".

Ranking minority member Lamar Smith (R-Texas) similarly laid out his distaste for online gambling, saying, "The dangers of Internet gaming are well known ... turning back the clock [on the prohibition of online gambling] will only encourage more problems."

In addition to the Judiciary Committee, the Treasury Department may likely be the next government body to tackle Internet gambling. The department is currently taking public

comments on its proposed rules for enforcing UIGEA. The comment period ends Dec. 12.

## Lawmakers push for easing Internet bet ban

By Steve Tetreault  
November 20, 2007

WASHINGTON, DC -- The Bush administration should consider relaxing laws against Internet gambling rather than risk setting a potentially expensive and "worrisome" precedent with European nations and other trade partners, eight lawmakers said in a letter on Monday.

The lawmakers were critical of the U.S. government reaction after it lost a World Trade Organization dispute with the tiny Caribbean nation of Antigua over online casinos. U.S. officials declared the administration never meant for Internet gambling to be covered by international trade agreements.

Arbitrators now are considering damage claims from Antigua, an online gaming haven that said a U.S. law seeking to block betting over the Internet was an illegal form of protectionism.

Other members of the World Trade Organization, including the European Union, Japan and Australia, also are claiming compensation for lost online gaming revenues in the billions of dollars.

Compensation "could prove expensive to the U.S. economy," the lawmakers said in a letter to Susan Schwab, the U.S. trade representative. "However, we are perhaps more concerned about what this withdrawal says about U.S. credibility as a trading partner."

"We are very concerned about the precedent this sets" for nations that also might be tempted to withdraw from trade obligations that become politically difficult, they said.

The letter was signed by eight House members, including Reps. Shelley Berkley, D-Nev.; Barney Frank, D-Mass., chairman of the House Financial Services Committee; and John Conyers, D-Mich., chairman of the House Judiciary Committee.

The lawmakers, who variously sponsor or support bills to roll back or study the Internet gaming restrictions, urged Schwab to consider working with Congress on "possible legislative solutions."

"Traditionally when a U.S. law has been found to be out of compliance, the administration has consulted with Congress," the House members said. But in this case, they said, the U.S. Trade Representative agency took a "drastic step" on its own.

The letter comes after a House Judiciary Committee hearing on Internet gaming Wednesday that included discussion of the trade implications of restricting online bets. It

seeks to frame the issue broader than merely whether online gambling is good or bad from social or moral standpoint, said a lobbyist familiar with the matter.

"No matter how you might feel about gambling, this administration's action, or inaction, on this case sets a dangerous precedent for our trade obligations going forward," said the lobbyist. "This is an issue of more than just gambling."