

Volume 6 Issue 6 June 2007

## Opinion: Regulating internet gambling in the US: recent developments

*The US has been considering options which would allow states to regulate and tax internet gambling, as illustrated by a number of Bills recently introduced to Congress. Rick Smith, Head of Government Affairs, Policy and Regulation with UC Group Limited, explains that with support, two of these Bills could shift US policy towards moving internet gambling from the unregulated underground to a safe and secure, well-regulated environment.*

The last few weeks have seen a number of important developments that promise significant change to the landscape surrounding internet gambling in the US. The UC Group, a UK-based online payments processing and financial services company, in conjunction with Baker Tilly, a leading accounting firm, has been closely involved with this issue over the past few years, but in particular since the introduction of the Unlawful Internet Gambling Enforcement Act (UIGEA). More recently, the UC Group has been a key participant in events that have given rise to genuine debate in the US over the potential to regulate the fast growing internet gambling marketplace.

There have been three principal phases in the developmental process.

- Phase I - H.R.2046: The Internet Gambling Regulation and Enforcement Act of 2007 ('The Frank Bill');

- Phase II - H.R.2607: The Internet Gambling Regulation & Tax Enforcement Act of 2007 ('the McDermott Bill');

- Phase III - Hearing: on 8 June 2007, the Financial Services Committee, chaired by Rep. Barney Frank, held a hearing entitled 'Can Internet gambling be regulated to protect consumers and the payments system?'

Phase I - H.R.2046

Sponsored by Financial Services Committee Chairman Barney Frank, the Frank Bill establishes a federal licensing and enforcement framework under which internet gambling operators could obtain licenses authorising them to accept bets from individuals in the US, on the conditions that they establish effective protections against underage and problem gambling, money laundering and fraud, and enforce prohibitions or restrictions on internet gambling prohibited by states, Indian tribes and sporting leagues. The bill was designed for referral only to the Financial Services and Energy and Commerce Committees. The licensing and enforcement responsibility would reside with the Financial Crimes Enforcement Network in the Treasury Department (FinCEN). FinCEN currently monitors anti-money laundering compliance of landbased casinos.

To qualify for a licence, the Frank Bill requires consumer protection

measures to be implemented by operators. Among other requirements, this includes measures to combat underage gambling (age / identity tools), problem gambling (e.g. individual and cumulative bet limits, deposit limits, session times, exclusions), geo-positioning / location to help block consumers from nonparticipating states, and measures to combat money-laundering and fraud. Apart from being non-discriminatory in regard of types of gambling covered, the bill also provides opt outs for states, tribes and sporting leagues. Specifically, states and tribes can opt out in whole, or participate with selected types of gambling (e.g. poker only). It is also the opinion of some that the Frank Bill provides an avenue for the US to extricate itself from problems it is facing with the World Trade Organization as a result of the action launched by Antigua a few years back.

Co-sponsors (Phase IV) in support of H.R.2046 are growing steadily, with further legislative action to follow once there is sufficient support. The Frank Bill needs congressional and 'grassroots' support.

Phase II - H.R.2607

H.R.2607, introduced by Congressman Jim McDermott, is a companion bill to the Frank legislation, addressing the tax treatment of internet gambling operators licensed under the Frank bill. Specifically, the bill introduces a licence fee of 2% on customer deposits, paid by the licensed operator and collected on a monthly basis, plus ensures collection of applicable corporate and state taxes. The McDermott Bill was introduced on 7 June 2007 and was referred to the Committee on Ways and Means.

If the Frank Bill sets out the regulatory infrastructure for internet gambling in the US, the McDermott Bill crystallises the financial opportunity that the industry presents to the American taxpayer - annual Federal revenues estimated as between \$6 billion and \$25 billion over the five years following enactment. It is anticipated that the 'new' Democratic leadership will be seeking additional sources of revenue to fund important tax cuts and other domestic expansion programs aimed at key industries. Congress is in a PAYGO (pay-as-you-go) situation, meaning for any project involving government expenditure, there needs to be an accompanying means of generating the necessary revenue to fund the project. Tacking the Frank Bill onto a worthwhile measure like student loans may generate more momentum within Congress than would otherwise be generated by the Frank Bill as a stand-alone bill.

Taken together, these circumstances make H.R.2046 and H.R.2607 even more attractive. Taxes from internet gambling provide one of the few (and perhaps the only) sources of significant new revenue that would attract broader support than a 'pure gambling bill'. Also, the need for individual states to increase revenues has already driven statelicensed gambling. Their ability to achieve further revenue from federally-licensed internet gambling will hopefully generate interest in a regulatory approach from states struggling to avoid tax increases or service cuts.

A number of myths did the rounds following introduction of H.R.2046, including the suggestion that the Frank Bill is seeking to repeal UIGEA (it is not) and that it will discriminate against non US-based operators (it does not). Considerable thought has obviously been given to ensure that the rights and interests of all parties - consumer, financial services provider, gaming company, regulator and taxpayer are protected. However, there is undoubtedly some strong and organised opposition to the Bills from religious constituencies and the far right, from some individual States, from Sports leagues, from vested political interests, even from the American Gaming Association, which baulks at federal regulation of any form of gambling despite larger members having been licensed

in the Isle of Man and / or Alderney. A number of measures are in place to address the concerns of these groups, including opt out provisions for states, tribes and sporting leagues, thus protecting the rights of these bodies, not to mention onerous consumer protection measures.

#### Phase III - H.R.2046 Hearing

The Hearing prompted significant subsequent debate around the two bills and the proposal to regulate and tax internet gambling in the United States. The Hearing presented a prime opportunity for affirmative testimony to be heard, and submitted, in support of a regulated industry - for the first time since 2001. Testimony came from an international array of experts including regulators, credit card and payments representatives, responsible gambling groups, lawyers, an accounting firm, academics and industry associations.

For the first time in the US, at the federal level, testimony was presented in support of the ability for internet gambling to be regulated in the context of a safe and secure environment for consumers. Written testimony included submissions from GamCare, the Remote Gambling Association, the National Council on Problem Gambling (US), Alderney Gambling Control Commission, Herbert Smith (lawyers working on the WTO case), and Isle of Man regulators. Expert testimony was presented in person by witnesses including Gerald Kitchen, Chief Executive of SecureTrading Group Ltd and Jon Prideaux, Chief Executive of Asterion Payments, who discussed the controls and oversights in place for financial transactions in this sector.

Congressman Frank was quoted as being satisfied with the outcome of the hearing, having updated the public record showing that technology exists to combat public concern issues.

#### Safe and Secure Internet Gambling Initiative

The Safe and Secure Internet Gambling Initiative (SSIGI) website, a grassroots and information initiative - [www.safeandsecureig.org](http://www.safeandsecureig.org) - has been established by initial founders comprising UC Group and Baker Tilly. The aim is to promote the message that the key objective of regulation is to move internet gambling from the unregulated underground to a safe and secure, well-regulated environment. Banners with links to the SSIGI website and promoting the message that this initiative supports safe and secure internet gambling have been produced and now appear on many websites.

The issue of internet gambling is clearly a sensitive one for United States legislators, with some indicating unease with the manner in which the UIGEA was introduced. It is evident from my meetings in Washington that the Frank and McDermott Bills have created considerable interest amongst legislators, observers and commentators alike, and should not be under-estimated.

Rick Smith

Head of Government Affairs,

Policy and Regulation UC Group Limited

[rick.smith@uc.com](mailto:rick.smith@uc.com)