The Online Gambling Wager: Domestic and International Implications of the Unlawful Internet Gambling Enforcement Act of 2006

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I. INTRODUCTION

Internet gambling is experiencing extreme economic growth, which may either be harnessed by the United States federal government for socially constructive goals or misused for ends deleterious to the common good. Surveys estimate that over 2000 Internet gambling sites and operators exist, which collectively generate an estimated $11.9 billion a year. This amount is expected to double by 2010. This high profit industry serves nearly twenty-three million people worldwide. Americans represent less than half of online gamblers (users), but account for sixty percent of online gaming revenues.

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3. See id.
4. Fact Sheet, supra note 1.
5. I. NELSON ROSE & MARTIN D. OWENS JR., INTERNET GAMING LAW: GAMBLING AND THE LAW 66 (Mary Ann Liebert, Inc. 2005) (a comprehensive
The proliferation of the Internet has enabled the industry's lightening-fast growth. Internet usage has rapidly increased with added availability and greater efficiency resulting from improved speed. Online gambling operators were quick to see the economic promise and quickly tapped into the large market for gambling made accessible by the Internet. Supported by secure banking software, operators no longer need to lure players to brick and mortar establishments where operating costs are high. Instead, the operator enables the player to gamble online where profits can reach up to five times that of the old brick and mortar casinos. As a result, consumers, attracted by the added convenience and savings of playing from their homes, quickly embraced the emergence of Internet gambling.

As the popularity of online gambling has increased, so have legal issues surrounding such gaming. Users and operators have been agile in adapting to the obvious benefit of online gambling, but policymakers and the law have been slow to develop mechanisms for enforcing antigambling laws. This leaves courts and prosecutors with the unenviable task of interpreting gambling laws written more than a decade ago to fit the novel enforcement needs of today.

In 1995, for example, the first offshore Internet gambling sites opened in Antigua and Barbuda where Internet gambling was legal. Based in a foreign jurisdiction, these operators were able to conduct business and avoid prosecution in the United States. As more operators moved

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6. See id. at 66.
7. See id. at 65-66.
8. Id. at 66.
10. ROSE & OWENS, supra note 5, at 67.
11. See id. at 67.
12. See id. at 7-8.
13. Id. at 7.
14. Id. at 7-8.
15. Id. at 192.
offshore, United States legislatures were unable to present a practical legal solution. The ambiguity in domestic law compounded this issue, leaving credit card companies, operators, and users without a remedy.

Congress's response to such concerns is the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA). The UIGEA's purpose is to enforce gambling laws that prohibit Internet gambling. The UIGEA attempts to meet this objective by banning fiscal transactions between financial institutions and operators.

Since the passage of the UIGEA, users have questioned how the law is going to affect their ability to gamble online. International banks are advising their clients to avoid taking online bets from United States customers. Some Internet gambling operators terminated U.S. user access to their sites because operators believe the risk of liability is too high. As a result, stock prices for many Internet gambling operators plummeted. Nevertheless, other operators continue to provide service to the more than eight million U.S. customers.

jurisdictional hurdles to prosecute offshore internet gambling operators).

18. ROSE & OWENS, supra note 5, at 6-7. Even when the law mandates that operators pay off winning bets to users adequate remedies and enforcement of gambling debts are difficult to obtain, because an illegal offshore operator may simply decline to pay off a winning bet the user. In addition, operators can find themselves the victims of users who exploit credit card chargebacks. Thus, as Rose and Owens point out, "this is truly the realm of Caveat Emptor for all sides." Id.
20. Id. §5361.
23. Karl West, Royal Plays It Safe And Legal; Following Ban, Bank Tells Corporate Clients to Avoid Taking Online Bets From US, HERALD (Glasgow), Oct. 13, 2006, at 21.
25. Id.
While this response to the UIGEA has been dramatic, the law's practical ability to curtail online gambling is weak. As this comment discusses, the recent enactment of the UIGEA brings to the forefront multiple failures in U.S. Internet gambling law and calls for a more practical legal solution, namely licensing and regulating Internet gambling.27

Section II of this comment sets out the background information necessary for a proper analysis of internet gambling law.28 It focuses on the classic debate between prohibition versus regulation,29 the difficulties of enforcing U.S. Internet gambling law offshore,30 possible regulation of Internet Service Providers (ISPs),31 alternative funding mechanisms,32 and earlier state and federal laws leading up to the UIGEA.33 Next, the comment discusses a recent World Trade Organization (WTO) case that examined whether previous United States gambling laws discriminated against Antigua.34 Section II concludes with a brief overview of the key portions of the UIGEA.35

Section III identifies the domestic and international legal problem presented by the passage of the UIGEA.36 Section IV critiques the UIGEA's ability to prohibit Internet gambling in the United States.37 In addition, Section IV examines the UIGEA's possible affect on the earlier WTO ruling as well as future litigation at the WTO that may result from the UIGEA.37

In an attempt to correct the multiple deficiencies within the UIGEA, Section V proposes that Congress craft new legislation that licenses and regulates Internet gambling without discriminating against foreign operators.39 Finally, Section VI concludes that current U.S. laws will remain inadequate until Congress decides to license and regulate

27. See discussion infra Part IV-V.
28. See discussion infra Part II.
29. See discussion infra Part II.A.
30. See discussion infra Part II.B.
31. See discussion infra Part II.C.
32. See discussion infra Part II.D.
33. See discussion infra Part II.E.
34. See discussion infra Part II.F.
35. See discussion infra Part II.G.
36. See discussion infra Part III.
37. See discussion infra Part IV.
38. See discussion infra Part IV.
39. See discussion infra Part V.
II. BACKGROUND

A. Prohibition vs. Regulation

As Internet gambling increases in popularity, the omnipresent question is whether the government should tax and regulate Internet gambling or prohibit Internet gambling all together.41

Opponents of online gambling argue that Internet gambling should be prohibited because it creates and supports a number of social ills.42 For example, minors are able to access online gambling sites with impunity as long as they have a credit card because software is not adequately developed to keep them from doing so.43 Research has revealed that gambling is a phenomenon two to four times more common with children and young adults than with older adults.44 Those most affected have been college students who often have excess time, money, and experience as users of interactive technology.45 According to opponents the high use by college students compounds already known dangers associated with gambling because it is unchecked, unsupervised, and in dormitory rooms isolated from

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40. See discussion infra Part VI.
41. Compare Liddell et al., supra note 16, at 349-54 (arguing that legalization, regulation, and taxation are the best ways to deal with online gambling), with Ryan D. Hammer, Comment, Does Internet Gambling Strengthen the U.S. Economy? Don’t Bet on It, 54 FED. COMM. L.J. 103, 127 (2001) (arguing that Internet gambling has a negative social and economic impact and should therefore be prohibited by holding ISPs and credit card companies liable).
42. Hammer, supra note 41, at 126-27.
44. See Hammer, supra note 41, at 122.
supervision. Furthermore, added access and seclusion are also problems for compulsive gamblers because access is so rapid and straightforward that their harmful behavior can go unobserved and unchecked.

In addition, opponents claim that the online market has a high potential for fraud because Internet start-up costs are low and many operators are offshore, whereas internal regulation and enforcement domestically are unpredictable. Such factors give unscrupulous operators a plethora of ways to take advantage of users. For example, an operator could quickly establish an Internet site and then shut down operations without dispersing payments to "winners."

Historically, organized crime has dominated the area of gambling and there is evidence that it is moving into Internet gambling. However, some scholars debate this assertion and believe there is no substantive proof that organized crime uses Internet gambling to conduct illegal activity. Furthermore, it is a common danger that hackers could manipulate the games or user accounts in order to steal money.

Conversely, proponents of online gambling argue that attempts to prohibit online gambling misunderstands the technology because online gambling is naturally able to fend off outside control by constantly adapting to prohibition. They suggest that states are losing significant tax revenue by trying to prohibit gambling while United States dollars continue to flow freely to foreign countries.

Historically, the large casino industry treated Internet

46. Id. at 145.
47. Malcolm, supra note 43.
48. Id.
49. Id.
50. Id. ("Through slight alterations of the software, unscrupulous gambling operations can manipulate the odds in their favor, make unauthorized credit card charges to the accounts of unsuspecting gamblers, or alter their own accounts to skim money.").
51. Id.
52. Id.
53. See ROSE & OWENS, supra note 5, at 63 (stating that no substantial proof exists that Internet gambling is being used as a money-laundering front).
54. Malcolm, supra note 43.
55. See Liddell et al., supra note 16, at 344-46.
56. See id.
gaming as a competitor and therefore lobbied against it. In 2001, however, its position changed when some of the largest casinos, including Harrah’s Entertainment, MGM Mirage, and Park Place Entertainment, began to support Internet gambling. These companies altered their position because of their bottom line. They observed the already dramatic growth of Internet gambling and perceived their own substantial potential for future earnings in the market.

In addition, proponents argue that licensing and regulating online gambling sites allow states to have greater control over the industry. Licensing and regulation give states greater oversight over social issues like underage gambling, loss limits so gamblers can control their gambling, and personal identification protection. In addition, market forces eliminate issues of fraud. Honest business practices build strong reputations, and in this type of questionable market environment, those companies who do not pay their players or deal openly with the financial industry are likely to lose their market position.

Proponents argue that liability is uncertain under current law and often inadequately enforced. Frequently, law enforcement does not adequately enforce the law because there are no practical technological mechanisms to prohibit Internet gambling transactions. The United States government’s inability to prohibit transactions between operators and users leads people to continue gambling despite its questionable legality. The mismatch between policy and reality facilitates disrespect for the law.

57. McBurney, supra note 17, at 347-48.
58. Id.
59. Id.
60. Id.
62. Id.
63. ROSE & OWENS, supra note 5, at 8.
64. Id.
65. See Liddell et al., supra note 16, at 344-45.
66. See id.
67. See id.
68. Stewart, supra note 61, at 13-14.
B. Problems Enforcing United States Laws Offshore

In order to enforce any United States online gambling law, courts must have jurisdiction. Generally, there are two tests to satisfy jurisdiction, the “effects test” and the Zippo test, which both give courts personal jurisdiction over offshore online gambling operators. Nevertheless, the determination that personal jurisdiction exists is not enough. To have any effect and to carry any weight, there must be a method for the U.S. government to enforce a judgment made in a U.S. court. Judicial rulings can be enforced either through a pre-existing treaty or the discretionary doctrine of comity. Nevertheless, because of practical restraints, the efficacy of both options is dubious. For example, both methods require the United States to seek agreement and support for its online gambling laws from foreign countries that solicit and license operators from whom they receive significant internal revenue. The Department of Justice has even noted the difficulty in bringing offshore operators to the United States for prosecution.

In order to avoid liability under state law and federal law, many Internet gambling sites are located offshore where Internet gambling is legal. These operators establish themselves away from the United States because foreign governments have created amicable corporate environments with heightened banking secrecy, light taxation, and ways to avoid U.S. regulation. For example, Partygaming, one of the leading online gambling operators, is based in Gibraltar because the company believes the United States is unable to

70. Id. at 327; see also Denis T. Rice & Julia Gladstone, An Assessment of the Effects Test in Determining Personal Jurisdiction in Cyberspace, 58 BUS. LAW. 601 (2003). The Zippo test considers the degree of interactivity between the user where jurisdiction is sought and the non-resident Web site, where as the “effects” test focuses on the effects within the forum caused by a non-resident Web site’s intentional acts outside of the forum. Id. at 602.
72. Id.
73. Id.
74. Id.
75. Malcolm, supra note 43.
76. See Liddell et al., supra note 16, at 326.
77. ROSE & OWENS, supra note 5, at 67.
enforce its laws in foreign jurisdictions. Partygaming, unlike the large Las Vegas casinos, has no assets in the United States that can be subject to seizure.

C. Possible Regulation of Internet Service Providers

Generally, commentators suggest that regulating Internet Service Providers (ISPs) in order to enforce gambling laws is not implausible, but presents numerous enforcement difficulties and legal questions. Commentators advise significant difficulties arise when coordinating multi-state regulation. For example, if one state permits online gambling and another state bans it, ISPs will have difficulty filtering the information transferred to both states. Thus, either the state where Internet gambling is legal will have gambling sites blocked by the filtration system, or the system will violate the antigambling laws of the sister state because illegal Internet sites pass through. Constitutional issues may arise if the ISPs filtering technology inadvertently blocks sites that are not engaged in illegal conduct.

In practice, some ISPs already admit that they are currently incapable of effectively blocking Internet gambling sites. If ISPs admit that they cannot block Internet gambling sites, then it is unlikely that they will be able to regulate operators’ future responses to their blocking efforts. As ISPs develop the technology to block online gambling sites, operators are likely to develop improved technology not susceptible to ISP blocking. As such sites develop technology to avoid blocking, ISPs will need to adapt. Ultimately, ISP regulation designed to stop Internet

79. Id.
81. Id.
82. Id.
83. See id.
84. See id. (citing Ctr. for Democracy & Tech. v. Pappert, 337 F. Supp. 2d 606, 610-11 (E.D. Pa. 2004) (finding that technology that leads to blocking of sites that are not illegal could violate the First Amendment)).
85. Kindt & Joy, supra note 45, at 150.
86. See Mann & Belzley, supra note 80, at 287-88.
87. Id. at 287.
88. Id.
gambling is not the most effective way to prohibit Internet gambling.\textsuperscript{89}

\textbf{D. Alternative Funding Mechanisms}

Many online gambling sites provide alternative methods to transfer money that avoid oversight by large institutional financial services such as credit card companies and U.S. banks.\textsuperscript{90} Some operators also provide users with the ability to put charges on their phone bills.\textsuperscript{91} In addition, U.S. users may also use European Union banks for transactions with online gambling business.\textsuperscript{92}

Most sites provide users with links to offshore finance companies like Clear-Pay, Neteller, and FireFox to establish “e-wallets.”\textsuperscript{93} Through an e-wallet, a user directs money to an offshore company who then makes the payment to the online gambling business.\textsuperscript{94} Generally, it is thought that if U.S. banks were barred from making transactions with e-wallets, this money transfer method could be restricted.\textsuperscript{95}

In addition, new devices for legitimate financial transfers are being created that could be used to conduct online gambling transactions. For example, the HomeATM, a completely legitimate and lawful device, could theoretically provide a safe and secure medium for transfer of capital to and from operators and users.\textsuperscript{96} Currently, when a user makes a payment with her credit card to a gambling site, a 7995 merchant code indicates to the credit card company that the transaction is to an online gambling service.\textsuperscript{97} Intermediary services, like PayPal have recently cut-off service to gambling operators who mask merchant codes, thereby eliminating any trace of how the funds are used.\textsuperscript{98}

\begin{itemize}
  \item \textsuperscript{89} See id. at 287-88.
  \item \textsuperscript{90} McBurney, \textit{supra} note 17, at 349.
  \item \textsuperscript{91} Id.
  \item \textsuperscript{92} Stewart, \textit{supra} note 61, at 5.
  \item \textsuperscript{93} McBurney, \textit{supra} note 17, at 349.
  \item \textsuperscript{94} Stewart, \textit{supra} note 61, at 5.
  \item \textsuperscript{95} Id.
  \item \textsuperscript{96} See HomeATM, \url{http://www.thehomeatm.com/merchant.html} (last visited Oct. 1, 2007). HomeATM allows users to “swipe” their debit or credit cards through a HomeATM swipe pad, similar to the device used at a grocery checkout counter, and instantly transfers funds from a bank account to a HomeATM wallet. See id.
  \item \textsuperscript{97} ROSE \& OWENS, \textit{supra} note 5, at 211.
  \item \textsuperscript{98} Id. PayPal has recently ended service to online gambling operators. Id.
\end{itemize}
HomeATM works in a similar manner. A system like the HomeATM replicates the same code masking technique. Devices like HomeATM could allow operators and users to transfer money to one another without the U.S. government, Banks, and Credit Card companies, discovering the purpose of the transaction.

E. Background of Past State and Federal Laws

States have often prohibited gambling through the application of police powers. Historically, states have treated gambling as malum in se, rationalizing that public policy dictate prohibiting gambling in order to protect such interests as citizen safety and well-being. Over time, however, states began to lessen their strict restrictions because they recognized the potential profits taxing sanctioned gaming could generate. Thus, states began to license some forms of gambling while still prohibiting unregulated gaming where the state derived little profit.

Consequently, states have attempted to follow a similar model with online gambling but have not had similar success. For example, Nevada, understanding that online gambling had comparable potential for state earnings, decided to develop a similar licensing framework. Unlike most states that have never passed laws specifically mentioning Internet gambling, Nevada has made it a crime for any unlicensed party in Nevada to take or make online bets to or from anyone anywhere. Thus, Nevada has the option to license online gambling, possibly creating substantial revenue for the state. Nevertheless, Nevada has yet to allow Internet gambling because of unresolved questions about unauthorized access by minors or players.

99. See HomeATM, supra note 96.
100. See id.
101. Mann & Belzley, supra note 80, at 282.
102. ROSE & OWENS, supra note 5, at 101 (describing gambling as “a wicked traffic that should be prevented.”).
103. See id. at 100-01.
104. See id.
105. Id. at 100-01.
106. See id.
107. Id. at 77-79.
108. ROSE & OWENS, supra note 5, at 6.
109. Id.
from jurisdictions that prohibit online gambling.\textsuperscript{110} This has left Nevada in an inauspicious situation: having the foresight to see the substantial revenue to be made from online gambling, yet unable to take advantage of the opportunity.\textsuperscript{111}

Other states, without having licensed online gambling because of uncertainty over operator liability, consumer protection, or moral objections, have been equally unclear in the creation and enforcement of their gambling laws.\textsuperscript{112} Some states, like Hawaii and Utah, have clear bans on online gambling, but seldom enforce the law.\textsuperscript{113} Other states, like California, have left the law regarding online gambling unclear by not expressly making it either illegal or legal to gamble online.\textsuperscript{114} When liability is unclear or the law is rarely enforced, users and operators must guess at the state of the law and their possible liability.\textsuperscript{115}

Congress has also attempted to pass legislation prohibiting online gambling.\textsuperscript{116} Most of these efforts have failed.\textsuperscript{117} For example, in 1996, Arizona Senator Jon Kyl introduced the Internet Gambling Prohibition Act (IGPA).\textsuperscript{118} The IGPA would have made it illegal both to operate E-Casinos and to use them for betting.\textsuperscript{119} The bill was jettisoned in committee in some measure because the Department of Justice (DOJ) stated publicly that it did not want to prosecute citizens for gambling five dollars online.\textsuperscript{120} In addition, some criticized the bill because it allowed online pari-mutuel betting on horse races, which appeared to acquiesce politically to the traditional gambling industry's influence.\textsuperscript{121} Even if IGPA passed through committee, it

\textsuperscript{110} Id. at 79.
\textsuperscript{111} See id.
\textsuperscript{112} See Mann & Belzley, supra note 80, at 283.
\textsuperscript{113} See ROSE & OWENS, supra note 5, at 7 n.9.
\textsuperscript{114} Id. at 38.
\textsuperscript{115} See id. at 37-38.
\textsuperscript{116} Id. at 74-76.
\textsuperscript{117} Id.
\textsuperscript{118} Internet Gambling Prohibition Act, S. 474, 105th Cong. (1997).
\textsuperscript{119} McBurney, supra note 17, at 348.
\textsuperscript{120} ROSE & OWENS, supra note 5, at 3-4.
\textsuperscript{121} Liddell et al., supra note 16, at 324. Pari-mutuel betting often is the standard in horse races and refers to a gambling structure where individual wagers are pooled together and then winnings are unevenly distributed from the pool based on the initial percentage of the pool wagered. Shannon Bishop, And They're Off: The Legality of Interstate Pari-Mutuel Wagering and Its Impact
 would remain difficult for the government to enforce because it was limited in its ability to go after offshore gambling operators.122

Years after this attempt, there is still no federal legislation making it crime for users to wager online.123 In fact, no person has ever gone to prison for placing a bet online, nor is there any federal statute or regulation that would apply to the user who makes such a bet.124

With the precedent of Senator Kyl’s unsuccessful attempt buttressed by the DOJ’s clear statement that it would not pursue users, opponents of online gambling attempted to outlaw sources of funds, such as credit cards and other electronic money transfer devices.125 Thus, in 2001, Congressman Jim Leach of Iowa introduced the Unlawful Internet Gambling Funding Prohibition Act (UIGFPA).126 The purpose of the UIGFPA was to eliminate online gambling’s source of revenue by preventing banks and other financial institutions from knowingly participating in illegal online gambling transactions.127 It therefore prohibited financial services from accepting electronic fund transfers, checks, credit cards, and collection of gambling debts from E-Casino users.128

Once again, Congress’s attempt failed.129 Detractors argued that UIGFPA was futile because it failed in its primary purpose.130 Consumers could use third-party debit processors, like SureFire or PayPal, to continue to place online wagers.131 In addition, the use of e-money would have made the law unsuccessful.132 Ironically, commentators thought that because e-money is much harder to trace, its use

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122. See id.
123. See ROSE & OWENS, supra note 5, at 3-4.
124. Id.
125. Id. at 74-76.
127. Liddell et al., supra note 16, at 325.
128. Id.
129. ROSE & OWENS, supra note 5, at 75.
130. Liddell et al., supra note 16, at 325.
132. See id. at 312-13.
could lead to an actual increase in Internet gambling and money laundering.\textsuperscript{133}

Without any direct legislation, prosecutors have insisted that the 1961 Interstate Wire Act\textsuperscript{134} (Wire Act) outlaws Internet gambling.\textsuperscript{135} The DOJ has supported this argument, contending that online casino gambling is illegal under federal anti-gambling statutes.\textsuperscript{136}

While prosecutors contend that the Wire Act applies, several issues have made it a cumbersome prosecutorial device.\textsuperscript{137} First, the Wire Act only applies to wire, not wireless, betting.\textsuperscript{138} For example, placing bets using wireless communications, such as satellite Internet connections through the personal computer or cell phone, would be beyond the law’s scope.\textsuperscript{139} Therefore, this leaves the Wire Act handicapped as Internet technology continues to develop.\textsuperscript{140} Second, it does not apply to non-sport Internet gambling.\textsuperscript{141} Therefore, the Wire Act does not apply to much of the non-sports related gambling that occurs online, such as poker.\textsuperscript{142} Third, the Wire Act only applies to those intermediaries who “knowingly” assist in a gambling activity, a rather high burden of proof on the government.\textsuperscript{143}

\section*{F. International Legal Conflict Between Antigua and the United States}

When the United States signed the General Agreement on Trade in Services (GATS), it agreed to permit the same type of goods and services as fellow World Trade Organization (WTO) members.\textsuperscript{144} GATS requires the United States to

\begin{footnotes}
\textsuperscript{133} Id.
\textsuperscript{135} Mann & Belzley, supra note 80, at 283.
\textsuperscript{136} Malcolm, supra note 43.
\textsuperscript{137} See Liddell et al., supra note 16, at 321-22. However, the Wire Act is arguably broad enough to cover some wireless transmissions. Id.
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} In re Mastercard Int’l Inc., 313 F.3d 257, 262-63 (5th Cir. 2002) (holding that the Wire Act only applies to sports betting); see also Liddell et al., supra note 16, at 322.
\textsuperscript{142} Liddell et al., supra note 16, at 322.
\textsuperscript{143} Mann & Belzley, supra note 80, at 284.
\end{footnotes}
avoid protectionist or discriminatory economic activity.\textsuperscript{145} Other countries that signed GATS expressly stated that they were not authorizing offshore Internet gambling in their countries, but the United States took a different approach.\textsuperscript{146} The United States agreed to allow every recreational service, except sporting.\textsuperscript{147}

In 2003, Antigua requested a dispute settlement panel before the WTO in order to determine whether it had suffered economic damages as a result of U.S. anti-gambling laws.\textsuperscript{148} The general legal question was whether U.S. state or federal laws breached the GATS commitment of nondiscrimination by prohibiting offshore online gambling operators from taking bets from the United States.\textsuperscript{149} In November 2004, the WTO issued its first panel report and both the United States and Antigua appealed.\textsuperscript{150}

On appeal, the United States argued that an exception found in GATS Article XIV applied in the case.\textsuperscript{151} Article XIV allows governments to act contrary to the GATS agreement when it is “necessary to protect public morals or to maintain public order.”\textsuperscript{152} GATS Article XIV limits this exception by letting countries invoke it “only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.”\textsuperscript{153} According to the United States, its laws were reasonable because they were necessary to combat money laundering, fraud, compulsive gambling, underage

\textsuperscript{145} ROSE & OWENS, supra note 5, at 192.
\textsuperscript{146} U.S. Beats Antigua, supra note 144, at 437.
\textsuperscript{147} Id. Sporting relates to sports teams, not gambling. Id.
\textsuperscript{148} ROSE & OWENS, supra note 5, at 192. “The complaint was based on Article VI (domestic regulations in restriction of trade in services), Article XI (forbidding cross border transfer of funds), Article XVI (denying market access) and Article XVII (denying most favored nation treatment to suppliers of “like” services).” Id.
\textsuperscript{149} See id. at 191-92.
\textsuperscript{151} ROSE & OWENS, supra note 5, at 194.
\textsuperscript{152} Id. (citing General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, Legal Instruments – Results of the Uruguay Round, 33 I.L.M. 1125 (1994)).
\textsuperscript{153} Id.
gambling, and organized crime. The WTO Appellate Body partially agreed. In 2005, it ruled that the United States could restrict Internet gambling because there was a connection between the remote supply of gambling services and dangers to the American public.

Both countries claimed victory after the decision. The United States pointed out that the decision allowed itself and other WTO members to maintain restrictions on Internet gambling because such laws protect "public morals." Antigua countered, arguing that the decision was beneficial for foreign countries because it would require the United States to bring its laws into conformity with international law.

Nevertheless, the decision was not a decisive win for the United States. The WTO recognized the United States' concerns regarding offshore operators accepting bets from U.S. users as legitimate, yet it did not find a nexus between the supply of Internet gambling services and the danger to U.S. citizens. To determine the legitimacy of the U.S. concerns, the WTO considered factors such as the volume, speed, ease of access, breadth of international reach, near anonymity, and isolated environment. In addition, the WTO specifically rejected the U.S. argument that the threat of organized crime was significant. The WTO explained that there was insufficient evidence to support the argument that online gambling was more pervious to the involvement of organized crime than other forms of gambling.

The United States was also unable to show that it did not ban offshore operators from a gambling market in which domestic operators were permitted. The United States was unable to rebut the perceived inconsistencies in the 2000

155. Id.
156. Id.
158. Id.
159. Id.; see also McBurney, supra note 17, at 359-60.
160. McBurney, supra note 17, at 359-61.
161. Id. at 360.
162. U.S. Beats Antigua, supra note 144, at 437.
163. McBurney, supra note 17, at 360-61.
164. Id. at 360.
165. Id. at 361.
Interstate Horseracing Act (Horseracing Act). The Horseracing Act allows interstate betting by users as long as the betting is legal in both states. According to the WTO, allowing interstate betting while expressly barring offshore operators discriminated against foreign jurisdictions. Thus, the WTO determined that the Horseracing Act violates rules of nondiscrimination, and that other gambling prohibitions restricting the ability of foreign firms’ access to the U.S. market are also invalid.

The WTO, however, did not address whether U.S. states can also be in violation of WTO antidiscrimination rules. Antigua argued that along with federal statutes a number of state laws were also discriminatory. The Appellate Body declined to rule on the issue because Antigua had not made a prima facie case of state discrimination inconsistent with GATS. Thus, the appellate decision overturned the earlier ruling, which reviewed eight state laws, finding at least four discriminatory on their face. Therefore, the question of whether state prohibitions on gambling violate WTO antidiscrimination laws is still unanswered.

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166. See id. at 359, 361.
167. U.S. Beats Antigua, supra note 144, at 438. Congress amended the Interstate Horseracing Act in December 2000 to allow pari-mutuel betting on horse races by phone or computer if the wagers take place in U.S. states where it is legal. The law expressly denied foreign operators the opportunity to compete in the U.S. market, and thus Interstate Horseracing Act was deemed discriminatory by the WTO. Id.
168. Id.
170. Id.
172. Id.
173. Panel Report, supra note 150, ¶ 6.357 (citing COLO. REV. STAT. § 18-10-103; LA. REV. STAT. ANN. § 14:90.3; MASS. ANN. LAWS ch. 271, § 17A; MINN. STAT. §§ 609.75, 609.755(2)-(3); N.J. CONST. art. IV, § 7; N.J. ADMIN. CODE § 2A:40-1; N.Y. CONST., art. 1, § 9; N.Y. GEN. OBLIG. LAW § 5-401; S.D. CODIFIED LAWS §§ 15, 22-25A-1 and; UTAH CODE ANN § 76-10-1102).
175. See Barnes, supra note 169.
Some experts believe it is likely that the United States will amend the Horseracing Act to allow betting on horse races through international casinos.\textsuperscript{176} If the amendment passes, the United States would then be able to prohibit all other forms of Internet gambling, foreign and domestic, without violating the WTO ruling.\textsuperscript{177}

Following the WTO's decision, in August 2006, the WTO established another panel to determine whether the United States had complied with its ruling.\textsuperscript{178} The new panel will rule on the United States' compliance sometime in early 2007.\textsuperscript{179} If the panel determines that the United States is not in compliance with the WTO ruling, it cannot directly force the United States to act, but it can impose punitive damages.\textsuperscript{180} Punitive damages are usually granted through cross-retaliation and are only given to a party if the injury harms a key economic sector.\textsuperscript{181} The WTO would likely grant cross-retaliation against the United States because Internet gambling in Antigua is second only to tourism in the country's economic prosperity.\textsuperscript{182}

If the WTO grants punitive damages and Antigua takes retaliatory measures, Antigua will likely seek the right to copy and export U.S. intellectual property such as DVDs and CDs.\textsuperscript{183} This could have a large effect on U.S. intellectual property firms like Microsoft or Disney and could pressure the U.S. legislature to change its laws.\textsuperscript{184}

\textbf{G. Overview of the Unlawful Internet Gambling Enforcement Act}

The most recent attempt to prohibit Internet gambling is

\begin{itemize}
  \item \textsuperscript{176} Butterfield, supra note 157.
  \item \textsuperscript{177} \textit{U.S. Beats Antigua}, supra note 144, at 438.
  \item \textsuperscript{180} Paul Blustein, \textit{Against All Odds: Antigua Besting U.S. in Internet Gambling Case at WTO}, WASH. POST, Aug. 4, 2006, at D01.
  \item \textsuperscript{181} James, supra note 178.
  \item \textsuperscript{182} \textit{Id.}
  \item \textsuperscript{183} Blustein, supra note 180.
  \item \textsuperscript{184} See Lanman, supra note 179.
\end{itemize}
the Unlawful Internet Gambling Enforcement Act (UIGEA). The UIGEA passed by a majority in both houses and was signed into law on October 13, 2006. 

The UIGEA’s purpose is not to target those responsible for gambling, but rather to target intermediaries who facilitate gambling in the hopes of decreasing the number of U.S. citizens gambling online. It attempts to accomplish this goal by preventing financial institutions, including banks and credit card companies, from processing payments for unlawful Internet gambling.

The UIGEA’s language begins by noting that it in no way “shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.” Therefore, the UIGEA leaves all previous legislation unamended. In addition, the UIGEA cannot expand gambling, and the DOJ can continue to argue before the WTO that all online gambling in the United States is illegal.

The UIGEA requires financial transaction providers to block money going to operators of illegal Internet gambling. The UIGEA defines the term “financial transaction provider” broadly to include creditors, credit card issuers, financial institutions, operators of electronic fund terminals, money transmitting business, or international, national, or local payment networks utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system. Thus, the UIGEA contains many financial systems within itself, including third-party providers like Neteller.

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187. See McBurney, supra note 17, at 364.
188. Id.
189. § 5361(b).
190. See id.
191. See *UIGEA Analyzed*, supra note 21.
193. Id. § 5362(4).
Under the UIGEA, these financial institutions are barred from accepting or transferring money for "unlawful Internet gambling." The UIGEA defines "unlawful Internet gambling" as placing, receiving, or otherwise knowingly transmitting a bet or wager through use of the Internet where the bet or wager is illegal under federal or state law. Nonetheless, The UIGEA does allow federal regulators to exempt transactions where identifying and blocking the transaction would be unreasonable.

Still left open is whether regulators will force financial institutions to regulate their partners. For example, a U.S. bank will be required to block transactions to unlawful gambling sites, but left unanswered is whether U.S. banks are responsible for funds they send to offshore banks. Of course, many offshore operators use such financial services, like Neteller and Firefox, to conduct their business. The UIGEA also requires that an ISP remove or disable online sites that violate its provisions or any hypertext link to such a site if the ISP controls that server. Congress had 270 days to determine precisely how to regulate the financial industry within the framework of the UIGEA.

There are also some exceptions to the UIGEA. The UIGEA considers fantasy sports leagues legal as long as they are not based on the current membership of an actual professional or amateur sports team and prizes are announced in advance and not determined by the number of participants or the fees paid to enter the league. In addition, free games are legal and Internet sites can give users credits that users can only redeem for more plays online. Credits cannot be redeemed for money. However, the UIGEA does allow free bingo to give small cash prizes.

195. Id.
196. § 5362(10)(A).
197. UIGEA Analyzed, supra note 21.
198. Id.
199. Id.
200. See id.
202. Id. §5364(a). At the time of this article's publication, Congress has yet to develop regulations for the enforcement of the UIGEA.
203. Id. §§ 5362(1)(E)(ix)(I)-(III).
204. UIGEA Analyzed, supra note 21.
205. Id.
that are paid out of the operator's advertising budget.\textsuperscript{206}

Of course, states still maintain the power to regulate gambling within their own borders.\textsuperscript{207} The UIGEA allows states to legalize, regulate, and license online gambling provided it is intrastate and blocks access to minors and citizens of other states.\textsuperscript{208} In addition, the UIGEA grants Native American tribes the right to operate online games as long as the Indian Gaming Regulatory Act authorizes it.\textsuperscript{209}

The UIGEA also has a limitation on injunctions, which some commentators have considered ambiguous.\textsuperscript{210} At least one commentator has noted that the clause may mean that the government can order a bank not to transfer money to gambling sites but only if the bank knows they are sending money to a gambling site.\textsuperscript{211} However, at this time it is difficult to know what the legislature intended the clause to stand for.\textsuperscript{212}

### III. IDENTIFICATION OF THE PROBLEM

The passage of the UIGEA further illustrates major problems of enforcement that the United States faces as it attempts to prohibit online gambling.\textsuperscript{213} The UIGEA fails to put the United States in compliance with WTO standards.\textsuperscript{214} While this is significant, even more noteworthy is that the passage of the UIGEA may further violate WTO laws because it may discriminate against foreign operators.\textsuperscript{215} Even if the WTO does not find the law to be discriminatory, the UIGEA lacks dynamic means of enforcement and thus is ineffectual.\textsuperscript{216} The following analysis evaluates this problem by examining how the UIGEA falls short,\textsuperscript{217} and considers how licensing and regulating Internet gambling provides a

\begin{itemize}
\item \textsuperscript{206} Id.
\item \textsuperscript{208} Id. § 5362(10)(B).
\item \textsuperscript{209} Id. § 5362(10)(C).
\item \textsuperscript{210} UIGEA Analyzed, supra note 21 (stating the language of § 5365(d) is "indecipherable.").
\item \textsuperscript{211} Id.
\item \textsuperscript{212} Id.
\item \textsuperscript{213} See discussion infra Part IV.A.
\item \textsuperscript{214} See UIGEA Analyzed, supra note 21.
\item \textsuperscript{215} See discussion infra Part IV.B.
\item \textsuperscript{216} See discussion infra Part IV.A.
\item \textsuperscript{217} See discussion infra Part IV.A-B.
\end{itemize}
more practical and successful solution.\footnote{218}{See discussion infra Part V.}

IV. ANALYSIS

A. The UIGEA Domestically

The UIGEA does not provide prosecutors with adequate legal tools to attack online gambling. The DOJ can only prosecute users under the UIGEA if they engage in unlawful gambling activity.\footnote{219}{UIGEA Analyzed, supra note 21.} Since the UIGEA defines activity that is either unlawful under state or federal law,\footnote{220}{31 U.S.C. § 5362(10)(A) (2006).} prosecutors may have trouble enforcing the act. In fact, the UIGEA does very little to increase liability for operators of Internet gambling sites.

Most state laws regarding online gambling are ambiguous,\footnote{221}{See supra text accompanying notes 112-15.} leaving prosecutors and courts without guidance.\footnote{222}{See supra text accompanying notes 137-43.} Federal law is not applicable because the UIGEA leaves laws like the Wire Act unamended.\footnote{223}{§ 5362(b).} As a result, the debate over the Wire Act’s boundaries remains heated.\footnote{224}{See Poker Folds, supra note 194.}

However, the debate is one-sided in light of decisions that limit the Wire Act’s scope to only sports betting.\footnote{225}{In re Mastercard Int’l Inc, 313 F.3d 257, 262-63 (5th Cir. 2002).} This leaves most forms of Internet gambling untouched.\footnote{226}{Liddell et al., supra note 16, at 322.} Even when parties violate the UIGEA, the Wire Act will often be an inadequate option.\footnote{227}{See supra text accompanying notes 137-43.} The UIGEA therefore is left without any bite because the Wire Act may not apply and state law is too unpredictable to be reliable.\footnote{228}{See supra text accompanying notes 220-26.} Consequently, the UIGEA lacks the requisite legal rules needed to stop online gambling.\footnote{229}{See supra text accompanying notes 220-26.}

Not only are legal means inadequate, but practical enforcement mechanisms are also problematic. The UIGEA attempts to enforce itself with the help of ISPs\footnote{230}{See supra text accompanying note 201.} and by
limiting transfers of funds by intermediaries. These methods are insufficient.

Using ISPs to block Internet gambling sites presents far too many problems to be effective. In general, it is difficult to block sites, and many ISPs already admit that they are incapable of effectively blocking Internet gaming sites. This situation will worsen as technology advances. The section of the UIGEA on ISPs is also limited in its ability to prosecute offshore ISPs designed to facilitate online gambling. The law requires that an ISP must remove or disable any gambling site in violation of the UIGEA that "resides on a computer server that such service controls or operates." Therefore, the law limits the reach of the UIGEA if the site resides on a foreign ISP because of the difficulty in prosecuting an offshore company.

In addition, the UIGEA still allows states to determine whether or not to prohibit online gambling, thereby creating a precarious situation in which some states may license online gambling while others may not. If this occurs, it will further complicate ISPs ability to regulate the information presented to citizens of each state and may present constitutional violations. In addition, the UIGEA leaves United States based companies open to liability. For example, search engines based in the United States could be required to take down and eliminate hypertext links to unlawful gambling sites. If the search engines are unable to eliminate, the question would remain as to whether prosecutors really want to indict companies like Yahoo, Google and Microsoft.

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231. McBurney, supra note 17, at 364.
232. See supra text accompanying notes 80-89.
233. Mann & Belzley, supra note 80, at 287-88.
234. Id.
235. UIGEA Analyzed, supra note 21.
237. UIGEA Analyzed, supra note 21.
238. § 5362(10)(B).
239. Supra text accompanying notes 108-10 (stating that prior to the passage of the UIGEA, Nevada had already considered licensing and regulating online gambling).
240. See Mann & Belzley, supra note 80, at 286-87.
241. UIGEA Analyzed, supra note 21.
242. Id.
243. See id.
If regulation of ISPs has minimal effect on Internet gambling, the UIGEA can only stop Internet gambling by prosecuting those who transfer funds between users and operators.\textsuperscript{244} The UIGEA will most likely be successful at stopping large financial institutions, like U.S. banks and credit card companies, from transferring funds because these entities are located in the United States.\textsuperscript{245} However, it cannot stop other transfer mechanisms.\textsuperscript{246} In practice large financial institutions can be prohibited from sending funds to any Internet operator who has a 7995 credit card merchant code.\textsuperscript{247} Nevertheless, this still leaves companies that provide alternative financial transfer systems, like e-wallets, EU banks, and systems that mask credit card codes, unregulated.\textsuperscript{248}

The UIGEA can do little to control these companies because many are based in foreign jurisdictions where the United States is unable to exert its authority.\textsuperscript{249} Expectedly, future legislation may try to force U.S. banks to end their relationships with offshore e-wallets or EU banks.\textsuperscript{250} Even if Congress passes this type of legislation, other legitimate systems like HomeATM as well as those not yet developed will still allow the unfettered transfer of money between operators and users.\textsuperscript{251}

Furthermore, most operators are based offshore, making them very difficult to prosecute without support from the foreign country housing them.\textsuperscript{252} Many of these operators are making large profits in the U.S. market and are transferring some of that profit to the foreign country licensing them.\textsuperscript{253} In light of the economic benefit for both the operator and the

\textsuperscript{244} See generally supra text accompanying notes 187-88; see also supra text accompanying notes 230-42.
\textsuperscript{245} UIGEA Analyzed, supra note 21.
\textsuperscript{246} Id.
\textsuperscript{247} Id. In 2001, Visa created the 7995 classification in order to stop operators from accepting wagers using its credit card. Likely, a similar method will be expanded to all money transfers, and the federal government will order those involved, including banks, to terminate transactions with operators who carry a 7995 credit card merchant code. Id.
\textsuperscript{248} See id.
\textsuperscript{249} See supra Part II.B.
\textsuperscript{250} See generally UIGEA Analyzed, supra note 21.
\textsuperscript{251} See supra Part II.D.
\textsuperscript{252} See supra Part II.B.
\textsuperscript{253} See supra text accompanying note 74.
foreign country, it is doubtful that either will respect the UIGEA, and unless the foreign nation where the operator is located gives full faith and credit to a U.S. court's judgment, the United States is limited by way of enforcement. Instead, operators and foreign countries are likely to continue developing ways to access the U.S. market, either through legal means, like the WTO, or questionable means, like anonymous e-money transfers.

Online gambling is massively popular in the United States, and prosecutors are wary of prosecuting citizens for online gambling. Users and operators will still be able to transfer money to one another, thus online gaming in the United States will persist. In addition, the technology operators and user use is fluid and adaptable, and both operators and users can adjust the technology further to avoid future laws supporting the UIGEA. Users will not stop gambling merely because Congress passed the UIGEA. Therefore, offshore gambling sites will continue to take large sums of capital from U.S. citizens without U.S. oversight or gains. Devoid of government oversight, the negative social implications will increase.

B. The UIGEA Globally

The UIGEA is a poor response to the WTO ruling that found the Horseracing Act in violation of the antidiscrimination principles of GATS. As stated previously, the UIGEA does not amend laws, including the Horseracing Act. Rather than amending the Horseracing Act, the UIGEA limits itself by stating that it does not apply to any federal law prohibiting, permitting, or regulating gambling within the United States. Therefore, the United

254. See supra Part II.B.
255. See supra Part II.D-E.
256. See supra Part I.
258. See supra text accompanying notes 244-51.
259. See supra text accompanying notes 95-99.
261. See Liddell et al., supra note 16, at 344-45.
262. See Schopper, supra note 131, at 321, 329.
263. See James, supra note 178.
States is still in violation of the WTO ruling. Some commentators have argued that Congress placed limits on the UIGEA at the behest of the DOJ, which still asserts that the Horseracing Act does not allow interstate gambling on horse racing and that all interstate gambling is illegal under the Wire Act. The WTO rejected this argument outright. Therefore, regardless of the rationale, the UIGEA leaves the Horseracing Act untouched and still in violation of the WTO ruling.

By failing to amend the Horseracing Act, foreign countries may be able to bring claims against U.S. states in the WTO. The WTO appellate body declined to rule on whether U.S. state laws were discriminatory because Antigua failed to argue a prima facie case of discrimination. Nevertheless, the next complaining country will likely be more cautious. For example, Oregon has a statute allowing Internet gambling on horseracing within its borders, but excludes residents and operators from other states. This includes operators from other countries. If, in the future, a foreign country argues that current intrastate gambling violates the WTO’s rule of nondiscrimination, it may be successful.

The passage of the UIGEA leads the United States down a number of problematic paths. The United States has a significant economic interest in the WTO. By ignoring the WTO ruling, the United States hurts its relationships with its foreign partners and conveys the message that it is not bound by the rules of foreign regulatory bodies. In addition, the UIGEA puts the United States in direct conflict with more economically powerful countries like Australia and the United Kingdom. Australia has already legalized Internet

265. See UIGEA Analyzed, supra note 21.
266. See id.
268. Id. § 149.
269. Barnes, supra note 169.
271. Barnes, supra note 169.
273. See Barnes, supra note 169.
274. See James, supra note 178.
275. Id.
276. ROSE & OWENS, supra note 5, at 198-99.
gambling and is a "pioneer" in online gambling.\textsuperscript{277} The United Kingdom has expressed its interest in legalizing and regulating online gambling sites and recently passed legislation supporting that interest.\textsuperscript{278} Both countries have an increased interest in the global propagation of online gambling.\textsuperscript{279} Inevitably their economic interests will collide with U.S. antigambling laws.\textsuperscript{280} If and when that occurs, the United States will be under a greater obligation to consider changing its laws or be subject to trade penalties from some of their closest economic partners.\textsuperscript{281}

The UIGEA may also violate WTO principles. The WTO's ruling stands for the proposition that the United States can restrict gambling, but must do so without discriminating against foreign operators.\textsuperscript{282} Therefore, any new U.S. law cannot allow domestic operators to run gambling sites without also permitting foreign operators to take part in the market.\textsuperscript{283} The UIGEA, however, may violate this principle because it has carved out an exception for states\textsuperscript{284} that the WTO may find discriminatory.\textsuperscript{285} If the UIGEA violates WTO antidiscrimination laws, the U.S. government will be required to either amend the law or enter protracted discussions with the international community over ways to compromise.\textsuperscript{286}

For example, The UIGEA expressly allows operators in states that have legalized online gambling to be involved in intrastate gambling transactions.\textsuperscript{287} This has the effect of allowing online gambling within a state to the possible exclusion of foreign operators.\textsuperscript{288} Whether or not intrastate gambling exceptions have the effect of discriminating against foreign operators is debatable,\textsuperscript{289} but past WTO rulings

\begin{footnotes}
\footnotetext{277}{Id. at 198.}
\footnotetext{279}{ROSE & OWENS, \textit{supra} note 5, at 198-99.}
\footnotetext{280}{\textit{See id.}}
\footnotetext{281}{\textit{See UIGEA Analyzed, supra} note 21.}
\footnotetext{282}{\textit{See supra Part II.F.}}
\footnotetext{283}{Barnes, \textit{supra} note 169.}
\footnotetext{284}{31 U.S.C. § 5362(10)(B) (2006).}
\footnotetext{285}{Barnes, \textit{supra} note 169.}
\footnotetext{286}{\textit{See supra text accompanying notes 180-84.}}
\footnotetext{287}{\textit{See supra text accompanying notes 180-84.}}
\footnotetext{288}{Barnes, \textit{supra} note 169.}
\footnotetext{289}{\textit{See supra text accompanying note 175.}}
\end{footnotes}
indicate that the argument has gravitational force. Therefore, the WTO could rule the intrastate exception is discriminatory because it allows intrastate betting to take place while excluding foreign operators.

As of yet, most states are not expressly licensing and regulating online gambling beyond horse racing but it could occur in the not so distant future. For example, Nevada could begin to license and regulate online gambling, as it has shown a desire to do. In addition, states could also begin selling their lottery tickets on the Internet. If this occurs, the argument that the United States is discriminating against foreign operators from a market that local operators enjoy might have better results.

Much of this opposes the United States' argument that legislation banning foreign operators is needed in order to exclude significant social harms. The argument that online gambling threatens a fundamental societal interest is unlikely to carry great weight because virtually all U.S. states permit or promote licensed or commercial gambling and have no specific prohibition against some form of online gambling. Instead, the perception is that the United States is more concerned with excluding foreign operators from the U.S. market than with upholding moral opposition to gambling. Thus, the international community will view the United States' actions as contradictory and self-serving.

V. PROPOSAL

The UIGEA's shortcomings indicate that even legislation that can pass both houses is incapable of adequately prohibiting online gambling and may actually enhance the defects in United States law. In light of the multiple deficiencies within the UIGEA, Congress must amend the

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290. See supra text accompanying notes 170-75.
291. See Barnes, supra note 169.
292. ROSE & OWENS, supra note 5, at 5-6.
293. Id. at 77.
294. Pfanner, supra note 279.
295. See supra text accompanying notes 170-75.
296. See supra text accompanying notes 154-58.
297. ROSE & OWENS, supra note 5, at 194.
298. See Lanman, supra note 184.
299. See supra text accompanying notes 116-33.
law or pass new online gambling legislation.\textsuperscript{300} In either case, new legislation must provide a pragmatic solution to the multiple concerns that currently face online gambling. Legislation that licenses and regulates online gambling is the most effective means for achieving practical and constructive ends.\textsuperscript{301}

Unlike the UIGEA, which allows a large amount of capital to flow to foreign governments,\textsuperscript{302} a new law should tax online gambling at a rate that is not so high that users will seek unregulated sites but sufficiently high enough for tax revenue to be substantial.\textsuperscript{303} The law should also give the U.S. government greater oversight of online gambling, as opposed to the UIGEA, which provides very little. Licensing and regulating online gambling would accomplish this goal because it would draw legitimate U.S. companies, such as large Las Vegas casinos, into the industry.\textsuperscript{304} Unlike the UIGEA, where foreign operators are uncontrolled, the United States would have control over these operators because many of them have assets in the United States that the U.S. government could seize.\textsuperscript{305} In addition, greater government oversight could help deal with social issues like money laundering, organized crime, high usage rates among children, and increased gambling addiction.\textsuperscript{306}

Ultimately, greater oversight and the influx of legitimate U.S. companies into the market would also allow the federal government to preempt interstate jurisdictional issues. Currently, under the UIGEA, ISPs are left with the difficult task of blocking illegal sites.\textsuperscript{307} A new law should define working boundaries to operators so that they can actively control the states that will or will not accept bets. This new law will shield states like Utah, with complete bans on gambling, from online gambling while still allowing other states to license such gambling.

Furthermore, new pragmatic legislation would correct

\textsuperscript{300} See supra Part IV.
\textsuperscript{301} See supra Part II.A.
\textsuperscript{302} See supra text accompanying note 56.
\textsuperscript{303} See generally supra text accompanying notes 55-78.
\textsuperscript{304} See supra Part II.A.
\textsuperscript{305} See supra Part II.B, IV.A.
\textsuperscript{306} Supra text accompanying note 62.
\textsuperscript{307} See supra Part II.C.
U.S. violations of GATS because domestic and foreign operators would be treated equally. Such legislation would obviate the current legal battle taking place in the WTO. First, the legislation would repeal or amend the Horseracing Act. It would allow foreign operators to enter into the same U.S. markets that U.S. operators enter. Otherwise, the WTO will take action. In addition, the new legislation should jettison the UIGEA's discriminatory carve outs for the states. Though the WTO's final decision will avoid the question of whether a U.S. state law banning unlicensed online gambling is discriminatory, the WTO's initial ruling implies that it is likely to consider the issue with greater scrutiny.

Congress can avoid this by crafting nondiscriminatory legislation, which would only require passing a gambling law that treats state and international operators equally. Congress should construct the law so as to allow individual states to determine the legality of online gambling within their borders, as long as the state gives foreign operators equal access. As a result, a state can either make online gambling completely illegal and bar all foreign operators or make all unlicensed online gambling illegal and allow licensed foreign operators. Either way, states will have decisional autonomy over online gambling and international principles will be protected. Thus, the United States, through thoughtful regulation of Internet gambling, can avoid unnecessary revenue loss, legitimize the gambling industry, increase government control and oversight, curtail negative social implications, prevent interstate jurisdiction issues, and put the county into compliance with its international legal obligations.

VI. CONCLUSION

Internet gambling is immensely popular and with that popularity comes a plethora of legal, social, and enforcement issues. Offshore Internet gambling operators and alternative financial mechanisms facilitate online gambling in a manner that makes it very difficult to prohibit. Past federal and state laws have consistently been ambiguous and provide

308. See supra Part IV.B.
309. See supra Part II.F.
310. See supra Part II.B.
inadequate responses to this issue. Users and operators are adept in finding innovative means to continue gambling, and the law has been slothful.\textsuperscript{311} As a result, U.S. citizens transfer millions of dollars into foreign companies and the governments that license them.\textsuperscript{312}

In response, the United States government passed the UIGEA. The UIGEA attempts to prohibit online gambling by banning financial transactions between financial institutions and online gambling sites.\textsuperscript{313} Yet, the UIGEA is already null because it is unable to stop the multiple alternative methods for transferring money to gamble.\textsuperscript{314} In addition, the UIGEA does not amend the discriminatory effect of the Horseracing Act and it brings the United States in greater conflict with international agreements.\textsuperscript{315}

The UIGEA is a disappointing piece of legislation that highlights multiple failures in U.S. Internet gambling law and lends itself to a more practical solution of licensing and regulating.\textsuperscript{316} Unlike the UIGEA, licensing and regulating Internet gambling will stop the flow of capital to foreign countries and will redirect those transactions to the United States.\textsuperscript{317} Licensing and regulation will also give the government the necessary oversight to deal with the social ills associated with gambling.\textsuperscript{318} In addition, by failing to treat foreign and domestic operators differently, a new law will avoid international trade conflict.\textsuperscript{319} Only by taking these measures will the United States be able to redirect the capital earned from Internet gambling domestically, thereby allowing internet gambling to be harnessed for the common good.

\begin{footnotes}
\item[311] See supra Part II.A.
\item[312] See supra text accompanying notes 1-5.
\item[313] See supra Part II.G.
\item[314] See supra Part IV.A.
\item[315] See supra Part IV.B.
\item[316] See supra Part V.
\item[317] See supra Part V.
\item[318] See supra Part V.
\item[319] See supra Part V.
\end{footnotes}