

# Overview of Authorities Regarding Ancillary Enforcement of Online Gambling Law

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1. The Wire Wager Act, 18 U.S.C. § 1084, only prohibits sports betting, not Internet gambling on a game a chance. *In re Mastercard International, Inc., v. Internet Gambling Litigation*, 132 F.Supp.2d 268 (E.D. La 2001), *aff'd* 313 F.3d 257 (5th Cir. 2002).

2. Gambling advertising prosecution may be premised on the theory of “aiding and abetting.” Aiding and abetting results when one individual or entity substantially assists another in committing a criminal offense. 18 U.S.C. § 2. In such a case, the individual responsible for aiding and abetting is punished the same as the principal actor who committed the offense in the first instance.

3. An alternative theory that could be used by the government in prosecution entities involved in advertising, assisting, or facilitating online gambling transactions is the concept of “conspiracy.” Unlike aiding and abetting, conspiracy requires the government to prove knowledge of, and voluntary participation in, an agreement to violate the law. Title 18 U.S.C. §371; *United States v. Bright*, 630 F.2d. 804, 813 (5th Cir. 1980). Conspiracy does not require a completed crime. *Vereniiia v. United States*, 347 U.S. 1, 11, 74 S.Ct. 358, 364, 98 L.Ed.2d 435 (1954).

4. Gambling advertising is entitled to constitutional protection under the First Amendment as commercial speech. The power of the government to ban all gambling activity is not co-equal to its power to ban speech regarding gambling. *Greater New Orleans Broadcasting Association, Inc. v. United States*, 527 U.S. 173, 119 S.Ct. 1923, 144 L.Ed.2d 161 (1999). The Court looks at the place where the activity occurs, now where the advertising is received, to determine legality.

5. International law recognizes the ability of the U.S. government to prosecute a foreign individual or entity, located outside its geographic boundaries, upon a showing of intent to produce “effects” in the United States, without proof of a specific overt act or effect actually occurring in

this country. *United States v. Noriega*, 746 F.Supp. 1506, 1512 (S.D. Fla. 1990).

6. *U.S. v. David Carruthers, Kaplan, et al*, Case No.: 4:06CR337CEJ(MLM), (E.D. MO May 7, 2007). [BetOnSports.com prosecution in St. Louis, MO – pending. Carruthers on house arrest; Kaplan in custody - both awaiting trial]

7. *United State. V. Lawrence*, Case No.: 1:07-cr-00597-PKC-1 (S.D. N.Y. 2007). [Case against NETeller founder, Steven Lawrence on money laundering charges and violation of the Illegal Gambling Business Act. Guilty plea.]

8. *U.S. v. E-Gold, et. al*, No. 07-109 (D. DC April 24, 2007) [prosecution against eGold and principals.] Indictment found here: <http://www.usdoj.gov/criminal/ceos/Press%20Releases/DC%20egold%20indictment.pdf> . [Guilty plea.]

9. *U.S. v. Cohen*, 60 F.3d 68 (2d Cir. 2001), *cert. den.* 536 U.S. 922, 122 S.Ct. 2587, 153 L.Ed.2d 777 (2002) [U.S. citizens are required to comport with U.S. law, regardless of where in the world they conduct their activities.]

10. Federal laws affecting online gambling operations:

A. ***The Wire Wager Act***, 18 U.S.C. § 1084: This statute prohibits the use of a “wire communications facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.” Violations of the wire act are punishable by fines up to the greater of \$20,000 or the total amount of bet or wager, wagered or placed, received or accepted in bets or wagers and imprisonment of up to two years.

B. *The Travel Act*, 18 U.S.C. § 1952. This statute provides, in relevant part that “whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce” with the intent to “distribute proceeds of any unlawful activity” or “promote, manage, establish, carry on or facilitate the promotion, management, establishment, or carrying on of an unlawful activity” shall be subject to criminal penalties that include fines and imprisonment of up to 20 years. Fines under *The Travel Act*, are the greater of \$250,000 for individuals (\$500,000 for companies) or twice the gross gain derived from the offense.

C. *The Wagering Paraphernalia Act*, 18 U.S.C. § 1953(a). This statute provides: “Whoever, except a common carrier in the usual course of business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills slip, token, paper, writing or other device, or to be used, or adapted, devised, designed for use in:

- (a) book making; or
- (b) wagering pools with respect to a sporting event;
- or
- (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.”

D. *The Organized Crime Control Act*, 18 U.S.C. §1955 (“OCCA” also known as the *Illegal Gambling Act*) provides, in relevant part: “Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years or both.”

An “illegal gambling business” is defined as a gambling business which:

- (i) is in violation of the law of a state or political subdivision in which it is conducted; and,
- (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and,

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has gross revenue of \$2,000 in any single day.

E. ***Racketeering Influenced Corrupted Organizations Act*** (“*RICO*”) 18 U.S.C. § 1961. To violate this statute, the defendant must commit two or more “predicate acts” involving separate substantive violations of federal law within a period of ten years. Gambling violations can constitute predicate acts for establishing a *RICO* violation. Other potentially available predicate acts include money laundering, tax evasion and other white collar criminal activities. *RICO* is a tool designed to fight organized crime and deter those who eventually take part in illegal activities. In order to establish liability under *RICO*, the government first must establish that the defendant engaged in a “pattern of criminal activity” and second, that the defendant invested the proceeds of that activity into some business enterprise. *Grant, Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173, 184 (3d Cir. 2000).

11. The “Treaty on Extradition between Canada and the United States of America,” entered into force on March 22, 1976 (hereinafter the “1976 Treaty”) – provides the framework for extradition of citizens between the U.S. and Canada.

12. The “Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters” (“Mutual Legal Assistance Treaty”) – supplements the 1976 Treaty.

13. *U.S. v. Tedder*, 403 F.2d 306 (7<sup>th</sup> Cir. 2005) *U.S. cert. den.* (2005). [Attorney convicted of assisting Gold Medal Sports with violating the Wire Act.]

14. Microsoft, Google and Yahoo settle for millions based on Internet gambling advertising: <http://www.theinquirer.net/inquirer/news/311/1011311/microsoft-yahoo-google-pay>

15. Millions in advertising dollars seized from Paradise Poker:  
<http://query.nytimes.com/gst/fullpage.html?res=9C02E3DA1F3EF932A05756C0A9629C8B63>
16. *People of the State of New York v. Arnold Fuchs, et al*, Indictment No. 2699-2006 (N.Y. Queens County Nov. 2006). [Online gambling RICO case alleging multiple gambling predicate offenses against operators, agents, and software consultants]
17. Paypal pays \$10 million to N.Y. A.G. to settle online gambling charges:  
[http://www.usatoday.com/tech/news/2003-07-25-paypal-gambling\\_x.htm](http://www.usatoday.com/tech/news/2003-07-25-paypal-gambling_x.htm)
18. Epassporte withdraws as payment processor from online gambling market: <http://vinnarayanan.casinocitytimes.com/articles/41030.html>
19. Credit Card companies stop processing online gambling payments in 2002: <http://www.marketwatch.com/News/Story/Story.aspx?guid=%7BB3CCF17E-ACB9-4BC8-AC38-D831476F0107%7D&siteid=mktw>
20. *U.S. v. Tedder*, Government Brief to USSC:  
<http://www.usdoj.gov/osg/briefs/2005/0responses/2005-0312.resp.html>
21. Bodog sued by 1<sup>st</sup> Technology; loses domain name:  
<http://casino.pokernews.com/news/2007/8/bodog-sued-loses-domain-name.htm>
22. *Kentucky v. 141 Domain Names*, Case Nos. 2008-CA-002000; 2008-CA-002019; 2008-CA-002036 (KY Ct. App. 2008) [Writ of Prohibition case numbers in Appeals Court] Case currently on appeal to the Kentucky Supreme Court, Case No.: 2009 SC 000043.