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Overview of Federal Laws, Cases and Enforcement Vis-à-Vis Internet Gambling

By Ben J. Hayes*



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Ben has significant experience in the area of sports and entertainment law, business acquisitions, commercial transactions, intellectual property law, gaming law, administrative and regulatory law, and general business and dispute resolution.

He is admitted to practice in Florida, and in the United States Middle District of Florida, the United States Tenth Circuit Court of Appeals, the United States Eleventh Circuit Court of Appeals, and the U.S. Supreme Court.

Ben's peers have elected him a member of the: International Masters of Gaming Law (2005–present); Florida Super Lawyers (2006); and Best Lawyers in America (2007—Sports Law).

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I. Federal Laws

A. Pro-Gambling Provisions

1. Pari-Mutuel Wager Income Tax Exclusion

“Gross income derived by a non-resident alien individual from a legal wagering transaction initiated outside the United States in a pari-mutuel pool with respect to a live horse race or dog race in the United States” is excluded from the calculation of such individual’s U.S. income tax.¹

2. Interstate Horseracing Act

An “interstate off-track wager” means “a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools.”²

B. Anti-Gambling Provisions

1. Wire Act

“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication 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 for 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, shall be fined under this title or imprisoned not more than two years, or both.”³

2. Conspiracy

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.”⁴

3. Money-Laundering

“Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States...with the intent to promote the carrying on of specified unlawful activity...is guilty of money-laundering.”⁵

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1 Pari-Mutuel Wager Income Tax Exclusion, 26 U.S.C. § 872
2 Interstate Horseracing Act, 15 U.S.C. §§ 3001-3007

3 Wire Act, 18 U.S.C. § 1084
4 18 U.S.C. § 371
5 18 U.S.C. § 1956

4. Amateur and Professional Sports Protection Act

"It shall be unlawful for (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."⁶

5. Organized Crime Control Act (OCCA)

"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."⁷

"As used in this section, 'illegal gambling business' means a gambling business which (i) is a violation of the law of a State or political subdivision in which it is conducted; (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 a gross revenue of \$2,000 in any single day."⁸

6. The Travel Act

"Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—(1) distribute the proceeds of any unlawful activity; or... (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, manage-

ment, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform—(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than [five] years, or both..."⁹

7. Interstate Transportation of Wagering Paraphernalia

"Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both."¹⁰

8. Lottery Statutes

"Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift, enterprise, or similar scheme; or, being engaged in the business of procuring for a person in one State such a ticket, chance, share, or interest in a lottery, gift, enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or

appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both."¹¹

9. Johnson Act (Gaming Devices)

"It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further*, that it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State."¹²

10. Racketeer Influenced and Corrupt Organizations (RICO)

"It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal...to

6 28 U.S.C. §§ 3701-3704

7 Organized Crime Control Act, 18 U.S.C. § 1955

8 *Id.*

9 The Travel Act, 18 U.S.C. § 1952

10 18 U.S.C. § 1953

11 18 U.S.C. §§ 1301-1307

12 15 U.S.C. §§ 1171-1178

use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”

“It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”

“It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.”¹³

11. Indian Gaming Regulatory Act (IGRA)

“Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.”¹⁴

II. Case Law

A. United States v. Jay Cohen

In *United States v. Jay Cohen*,¹⁵ the defendant was convicted of conspiracy and Wire Act violations, which as indicated above prohibit transmission of bets in interstate or foreign commerce, and he appealed. The U.S. Court of Appeals for the Second Circuit held: (1) the conspiracy conviction did not require

proof of the defendant’s corrupt motive; (2) the transmissions from customers did not fall within the safe harbor for transmissions limited to mere information that assisted in the placing of bets; and (3) the rule of lenity did not require reversal of the defendant’s convictions.

B. AT&T Corp. v. Coeur D’Alene Tribe

In *AT&T Corp. v. Coeur D’Alene Tribe*,¹⁶ the telephone company sought relief from a tribal court judgment requiring it to provide toll-free service to an Indian tribe conducting an interstate lottery. The tribal court judgment was in conflict with notices from state attorneys general that such service would violate state law. The federal court held that the lottery, to the extent it depended on interstate telephone calls for placement of wagers, was not a gaming activity “on Indian lands,” and thus was not covered by the Indian Gaming Regulatory Act’s preemption of state laws that purport to prohibit or to regulate Indian gaming.

C. In re MasterCard Intern. Inc.

In the *In re Mastercard Intern.* case,¹⁷ the court held that Internet gambling on a game of chance is not prohibited conduct under the Wire Act; the statute requires that the object of the gambling be a sporting event or contest.

D. State by Humphrey v. Granite Gate Resorts, Inc.

In *State by Humphrey v. Granite Gate Resorts, Inc.*,¹⁸ the Minnesota Attorney General brought a consumer protection action against the defendant Granite Gate

Resorts, Inc., in 1995 in connection with the defendant’s business known as On Ramp Internet Computer Services. The Attorney General alleged deceptive trade practices, false advertising, and consumer fraud under Minnesota law. The court found that personal jurisdiction existed as a result of the defendant’s conduct.

E. Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan v. Ashcroft

In *Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan v. Ashcroft*,¹⁹ letters from the National Indian Gaming Commission and the Department of Justice, advising the Indian tribe that its proposed Internet proxy bingo game was probably illegal, were held not to constitute final agency action under the Indian Gaming Regulatory Act, and thus were not subject to judicial review under the Administrative Procedure Act.

F. U.S. v. Truesdale

In *U.S. v. Truesdale*,²⁰ the defendants operated a sports wagering operation that accepted bets in the Caribbean, but conducted some financial transactions related to those bets in the Dallas area. The defendants were indicted on various conspiracy, money laundering, travel in aid of racketeering, and gambling counts related to their involvement in this bookmaking operation. All defendants were convicted on multiple counts and sentenced to prison terms ranging from fifteen to forty-six months. The defendants appealed.

The U.S. Court of Appeals for the Fifth Circuit overturned the convictions for illegal gambling in violation of Organized Crime Control Act, conspiracy, and money laundering. The Fifth Circuit held that the evidence was insufficient to sustain convictions under the federal gambling statutes for operating an

13 18 U.S.C. §§ 1961-1968

14 25 U.S.C. §§ 2701-2721

15 Indictment No. 98 CR 294 (TPG) (S.D.N.Y. 1998), affirmed by U.S. v. Cohen, 260 F.3d 68 (2nd Cir. 2001), cert. denied Cohen v. U.S., 536 U.S. 922 (U.S. 2002), and denial of post-conviction relief affirmed Cohen v. U.S., 128 Fed. Appx. 825 (2nd Cir. 2005)

16 45 F.Supp.2d 995 (D. Idaho 1998), reversed AT&T Corp. v. Coeur D’Alene Tribe, 283 F.3d 1156 (9th Cir. 2002), opinion amended and superseded AT&T Corp. v. Coeur d’Alene Tribe, 295 F.3d 899 (9th Cir. 2002)

17 132 F.Supp. 2d 468 (E.D. La. 2001), judgment affirmed In re MasterCard Intern. Inc., 313 F.3d 257 (5th Cir. 2002)

18 1996 WL 767431, 65 USLW 2440 (Minn. Dist. Ct. 1996), affirmed State by Humphrey v. Granite Gate Resorts, Inc., 568 N.W.2d 715 (Minn. App. 1997), affirmed State by Humphrey v. Granite Gate Resorts, 576 N.W.2d 747 (Minn. 1998)

19 360 F.Supp.2d 64 (D.D.C. 2004)

20 152 F.3d 443 (5th Cir. 1998)

illegal bookmaking operation in violation of Texas law; the book-making portion of the defendants' sports betting business occurred in Jamaica and the Dominican Republic, and the mere fact that the defendants had the capability or even the opportunity to break the law by accepting bets in Texas was insufficient to prove that they actually did so.

G. *Thompson v. Handa-Lopez, Inc.*

In *Thompson v. Handa-Lopez, Inc.*,²¹ a Texas resident filed a lawsuit in Texas to recover winnings from a California corporation that operated an Internet site featuring casino games. The corporation moved to dismiss for improper venue or for lack of personal jurisdiction, or, in the alternative, to transfer the action to California. The Texas court held that: (1) the California corporation had sufficient minimum contacts with Texas to permit specific jurisdiction in the case, and exercise of jurisdiction was also fair and reasonable; (2) the contractual provision that any disputes would be governed by California law and would be resolved exclusively by arbitration in San Jose did not preclude the filing of a lawsuit in Texas; (3) Texas was not an improper venue; and (4) the interests of justice did not warrant transfer of the action to California.

H. *U.S. v. Kaczowski*

In *U.S. v. Kaczowski*,²² the defendants were charged with: (1) aiding and abetting, and conspiring to conduct, finance, and own, an illegal gambling business

which used facilities in interstate and foreign commerce to distribute the proceeds of unlawful bookmaking; and (2) using interstate and foreign wire communication facilities between New York and the West Indies and Central America to place bets on sporting events. The federal court held that: (1) the indictment sufficiently charged conspiracy to violate and violations of the Wagering Paraphernalia Act, the Travel Act, the Wire Act, and New York law; and (2) the fact that bets were accepted offshore in a country in which gambling was legal did not preclude indictment for conspiracy to violate and violations of the Wire Act, because gambling was illegal in New York where the bets were placed.

III. Federal Enforcement Actions

A. Traditional Enforcement Actions

1. *U.S. v. Racing Services, Inc.*

Susan Bala, the principal of Racing Services, Inc., a pari-mutuel account wagering hub licensed by the State of North Dakota, which accepted wagers via the Internet, was found guilty of violating various federal laws and sentenced to twenty-seven months of imprisonment, two years supervised release, and a personal money judgment (forfeiture) of \$19,719,186.²³

2. *U.S. v. Gerald Uvari, et al*

Gerald Uvari and sixteen other individuals, who, over a period of four

years, brokered more than \$200 million in bets on horses and sporting events using telephonic and Internet account wagering hubs, were charged with eighty-eight counts, which included operating an illegal gambling business, violations of the Travel Act and the Wire Act, money laundering, structuring bank deposits, extortionate collection of gambling debts, and wire fraud.²⁴

B. Saber-Rattling

The U.S. Department of Justice (DOJ) recently sent advisory letters regarding Internet gaming to:

- the National Association of Broadcasters;
- the State of North Dakota;
- the State of Nevada;
- the U.S. Virgin Islands; and
- the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan.

These letters advise that: "Internet gambling and offshore sports book operations that accept bets from customers in the United States violate the Wire Act, the Travel Act, and Organized Crime Control Act." The DOJ letters also advise that the publication of advertisements of offshore betting shops could result in charges of conspiracy and aiding and abetting.

²¹ 998 F.Supp 738 (WD Tex 1998)

²² 114 F.Supp 2d 143 (WD N.Y. 2000)

²³ U.S. v. Racing Services, Inc., 2004 WL 3245933 (D.N.D. Dec 22, 2004) (NO CRIM C3-03-112)

²⁴ U.S. v. Gerald Uvari, et al (S.D.N.Y. Jan 13, 2005)

Ninth Circuit Says Debtor May Waive FDCPA "Cease Communication Directive"*

On August 24, 2006, the Ninth Circuit U.S. Court of Appeals held that a debtor may waive the

protections of section 1692c(c) of the federal Fair Debt Collection Practices Act (FDCPA), which requires a debt collector to cease communication with a debtor upon written request. According to

the facts of the case, the debtor-plaintiff submitted "cease communication directives" to a collection agency and its attorney, but the debtor later called

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* Courtesy of Buckley Kolar LLP, *Infobytes*, Sept 1, 2006