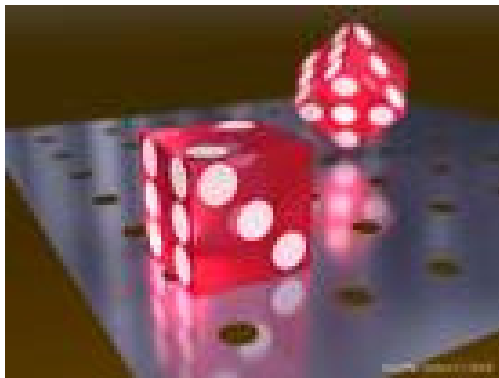


**INTERNET GAMBLING,
THIRD PARTY RISK SERVICE PROVIDERS,
and
U.S. CRIMINAL LAW
HOW ARE THE DICE ROLLING?**



Linda J. Shorey and
Anthony R. Holtzman

DOJ s Cease And Desist Advertising Letter



U.S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

June 11, 2003

National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Re: Advertising for Internet Gambling and Offshore Sportsbooks Operations

Dear Sir or Madam:



Key Language In The Letter

“[A]dvertisements for Internet gambling and offshore sportsbook operations are ubiquitous on the Internet, in print ads, and over the radio and television. The sheer volume of advertisements for offshore sports books and online casinos is troubling because it misleads the public in the United States into believing that such gambling is legal, when in fact, it is not. Because ... some of your organization’s members may be accepting money to place such advertisements, the Department of Justice, as a public service, would like you to be aware that **the entities and individuals placing these advertisements may be violating various state and federal laws and that entities and individuals that accept and run such advertisements may be aiding and abetting these illegal activities.**”

More Key Language

“Notwithstanding their frequent claims of legitimacy, Internet gambling and offshore sportsbook operations that accept bets from customers in the United States **violate Sections 1084, 1952, and 1955 of Title 18 of the United States Code**, each of which is a class E felony. Additionally, pursuant to Title 18, United States Code, Section 2, any person or entity who **aids or abets** in the commission of any of the above-listed offenses is **punishable as a principal violator of those statutes**. The Department of Justice is responsible for enforcing these statutes, and we reserve the right to prosecute violators of the law.”



Aftermath Example

\$7.2 million settlement with The Sporting News announced Jan. 20, 2006 (\$4.2 million fine & \$3 million of public service announcements that online gambling is illegal).



Statutes Identified In DOJ s Cease and Desist Advertising Letter

The Wire Act, 18 U.S.C. §1084

The Travel Act, 18 U.S.C. §1952

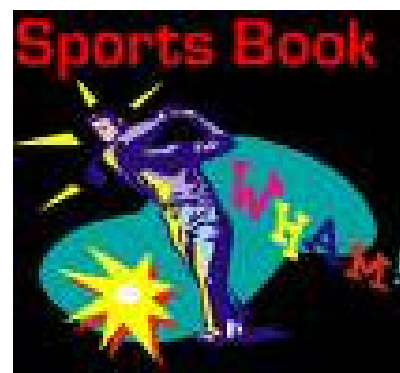
The Illegal Gambling Business Act, 18 U.S.C. §1955



The Wire Act

In relevant part --

“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.”



Current DOJ Position In A Nutshell

ANYONE ENGAGED IN THE BUSINESS OF BETTING OR WAGERING (i.e., gambling business) WHO, OVER THE INTERNET, TRANSMITS BETS OR WAGERS, OR INFORMATION ASSISTING IN THE PLACING OF BETS OR WAGERS, OR A COMMUNICATION THAT ENTITLES THE RECIPIENT TO RECEIVE MONEY OR CREDIT AS A RESULT OF BETS OR WAGERS VIOLATES THE WIRE ACT, WITH NO EXCEPTIONS.

The DOJ's position assumes the Internet is a wire communication facility, although no U.S. appellate court has directly addressed that issue, and ignores the decision of the U.S. Court of Appeals for the Fifth Circuit that the Wire Act addresses only sports wagering, not casino-style gambling.



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, management, 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 5 years, or both...”



Travel Act Cont d

“Unlawful activity” under the Travel Act includes “any business enterprise involving gambling ... in violation of the laws of the State in which they are committed or of the United States [i.e., the Wire Act].”

In other words, to violate the Travel Act, the principal must first commit a gambling offense under state or federal law.

The Illegal Gambling Business Act

“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.”

“Illegal gambling business’ means a gambling business which violates the law of a State or political subdivision in a State; involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such business; and 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.”

Illegal Gambling Business Act Cont d

In other words, to violate the Illegal Gambling Business Act, the principal must first commit a gambling offense under state law.

A violation of the Wire Act will not trigger liability under this Act.



Aiding Or Abetting: What Is It?

18 U.S.C. §2(a):

“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”
(emphasis added).



The Elements

The individual or entity:

(1) associates himself (or itself) with a venture, the purpose of which is to commit the crime, (i.e., a Wire Act violation) and with which the principal (U.S.-facing Internet gambling operator) is associated.

All this element requires is that you know you are providing services to the principal; it does not require that you know that the principal is committing a crime.

Elements Cont d

The individual or entity:

(2) participates in the venture.

You participate if the service you provide adds to the ability of the principal to commit the crime (e.g., makes the principal's website more attractive to U.S.-based punters, raises awareness of the website, makes it easier to place an online bet through the website, makes the website more efficient or safe, etc.)



Elements Cont d

The individual or entity:

(3) seeks, through the services provided, for the principal to succeed in committing the crime (i.e. to accept online bets from U.S.-based punters).

This means that you know what the principal is doing (accepting online bets from U.S.-based punters) and the services you provide are intended to assist the principal in that endeavor.



Elements Cont d

And:

(4) The crime is committed.



Aiding Or Abetting: What Is It NOT?

To be considered an aider or abettor, you DO NOT need:

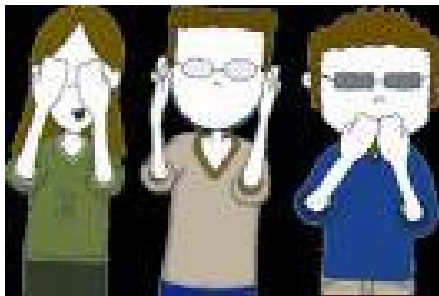
- (1) to have an agreement with the principal;
- (2) to communicate with the principal;
- (3) be present when the crime is committed;
- (4) to benefit from commission of the crime;

AND

The principal DOES NOT need to be indicted for, or convicted of, committing the crime.

Willful Blindness Doctrine

The willful blindness doctrine provides that you act, or acted, with knowledge of a fact when, although you do not, or did not, have actual knowledge of the fact, you would have had such knowledge had you not chosen to avoid seeking out the “truth” for fear of what you might discover.



Why Is The Willful Blindness Doctrine Important?

Nearly all crimes include a “mens rea” (i.e., a “guilty mind”) requirement.

You cannot commit a crime unless you engage in the prohibited activity while having the necessary guilty state of mind. For the crimes we are considering today (including aiding or abetting), that guilty state of mind is typically “knowledge” of the activities you are engaging in, that a crime is being committed, etc.



Willful Blindness Cont d

Under the willful blindness doctrine, you can be imputed with knowledge, even if you don't actually have it, if you had reason to know or reasonably should have known but did nothing to investigate. You are ignoring the obvious, i.e. "the red flags."

E.g., You sell your house for \$750,000 to the person who cleans your house. That person pays you in cash contained in a brown paper bag and asks you not to change the name on the deed. You accept the cash and agree not to change the name without undertaking any investigation.



Entity Liability

“A corporation may be convicted for the criminal acts of its agents, under a theory of respondeat superior. But criminal liability may be imposed on the corporation only where the agent is acting within the scope of employment. That, in turn, requires that the agent be performing acts of the kind which he is authorized to perform, and those acts must be motivated – at least in part – by an intent to benefit the corporation.”
United States v. Cincotta, 689 F.2d 238, 241-42 (1st Cir. 1982).

So Who's At Risk?

Possible Suspects:

Advertisers

Payment processors (e-wallets, credit card companies, banks)

Investors/Investment banks

Lenders

Suppliers of technical support

Suppliers of odds information

Advisors (lawyers, accountants, business planners, consultants)



More Evidence Of DOJ Thinking About Aiding or Abetting

In addition to DOJ's cease and desist advertising letter, there is the BetOnSports Indictment ...



Aiding Or Abetting Implications From The BetOnSports Indictment

(1) For advertisers of US facing Internet gambling sites:

- “spent millions of dollars in the United States, advertising ENTERPRISE-controlled Internet web sites and telephone services in **magazines, sports annuals and other sports publications, on sports radio, and on television.**” ¶25.
- “caused ... **radio** advertisements to be broadcast by radio stations across the country.” ¶36(12).



Implications Cont d

(2) For software providers and those providing technical support to US-facing Internet gambling sites:

- “[Defendants]...transported gambling equipment across State and national borders...” ¶ 33.
- “[Defendants] did carry and send in interstate commerce...laptop computers and software, used, and to be used and adapted, devised and designed for use in bookmaking...” ¶ 39.



Implications Cont d

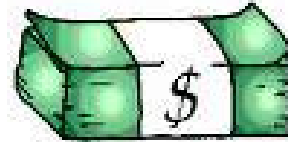
(3) For investors in and those providing funding to US-facing Internet gambling entities:

- “Some of these entities provided services to or otherwise supported the ENTERPRISE...These include legal entities that operated as fronts for or supporters of the ENTERPRISE, and entities whose funding and services benefited the ENTERPRISE’S goals.” ¶ 19(a).



Implications Cont d

- (4) For providers of banking services to US-facing Internet gambling operators:
- “Another component of the conspiracy was to have the [defendants]...launder money received by the ENTERPRISE in the form of illegal wagers and fees.” ¶ 34.



Other Criminal Provisions Of Which To Be Wary

General Criminal Conspiracy, 18 U.S.C. §371;
Conspiracy to Violate RICO, 18 U.S.C. §1962(d);
RICO, 18 U.S.C. §1962(a) (using racketeering
proceeds in a business);
RICO, 18 U.S.C. §1962(c) (participating in a
business through racketeering activity);
Money Laundering, 18 U.S.C. §1956(a)(1); and
Louisiana Gambling by Computer, La. Rev. Stat.
Ann. §14:90.3 (as well as laws of other states).



General Criminal 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.”



General Criminal Conspiracy Cont d

You could be found guilty of general criminal conspiracy if: (1) you entered into an agreement to commit a federal crime; and (2) you or one of your co-conspirators does something that furthers the commission of that crime. But, the crime does not actually have to be committed. E.g., You and I decide to rob a bank. I enter into a relationship with an employee of the bank and convince her to give me the combination to the bank's safe. The employee then turns me in to the police before the bank is robbed. You can be charged with general criminal conspiracy.

RICO

Congress enacted the Racketeering Influenced and Corrupt Organizations Act (“RICO”) as Title IX of the Organized Crime Control Act of 1970. Although conceived in a context principally concerned with traditional organized crime (i.e., the “mob”), the statute encompasses a broader range of what is known as “enterprise criminality.”



RICO Cont d

Very generally, the four provisions of 18 U.S.C. §1962 prohibit:

(a) the investment of money derived from racketeering activity or the collection of unlawful debt; (b) the acquisition of property through racketeering activity or the collection of unlawful debt; (c) conducting (i.e. operating or managing) an enterprise through a pattern of racketeering activity or unlawful debt collection; and (d) a conspiracy to commit any of those acts.

RICO Cont d

The most commonly charged provision of RICO, §1962(c), creates, in effect, a crime within a crime because in order for liability to attach, you must be engaged in a pattern of “racketeering activity,” commonly referred to as “predicate acts,” and through such activity have participated in the affairs of an enterprise.



RICO Cont d

“**Racketeering activity**” is defined in 18 U.S.C. §1961(1) to include a host of federal and state crimes, including the crimes defined by the Wire Act, the Travel Act, and the Illegal Gambling Business Act.

Not this kind
of racketeering activity



RICO Cont d

An enterprise is “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. §1961(4). An association-in-fact enterprise is “an ongoing organization, formal or informal ... [with] various associates function[ing] as a continuing unit.” *United States v. Turkette*, 452 U.S. 576, 583 (1981).

For an example of an alleged association-in-fact enterprise see ¶ 17 of the BetOnSports indictment.

RICO Conspiracy, 18 U.S.C. §1962(d)

“It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.”

You are guilty under §1962(d) if you knew of an endeavor that, if completed, would violate §§1962(a) or (c) and agreed to do something to further the endeavor. You do not need to directly participate in the operation or management of a RICO enterprise to be found guilty of conspiring to violate 18 U.S.C. §1962(c), as long as you agreed to help facilitate the operation or management of the RICO enterprise. See Racketeer Influenced and Corrupt Organizations: A Manual for Federal Prosecutors ("DOJ Manual") 135-36 (DOJ, 4th ed. 2000).

Louisiana s Gambling By Computer Law



In pertinent part –

“Gambling by computer is the intentional conducting, or directly assisting in the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit when accessing the Internet, World Wide Web, or any part thereof by way of any computer, computer system, computer network, computer software, or any server.”

One Website s Perspective

“HOW DO YOU KNOW IF THE US DEPARTMENT OF JUSTICE IS PREPARING TO [ARREST YOU OR] BREAK INTO YOUR HOME?... You criticize them and they are nice to you... Your telephones stop working... Your electricity gets turned off... You get a call from a hostage negotiator... A pizza delivery boy appears at your door wearing a Kevlar helmet... Illegally parked tanks aren't ticketed... Your new postal worker shows up dressed like a Teenage Mutant Ninja Turtle... Your nasal spray smells like tear gas... You see bright lights and hear a recording of bunnies being killed...”

www.justice-denied.net/Justice_Denied_Editorial.htm



QUESTIONS?

