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PROPOSALS TO REGULATE ILLEGAL INTERNET GAMBLING

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

PROPOSALS TO REGULATE ILLEGAL INTERNET GAMBLING, INCLUDING S. 627, TO PREVENT THE USE OF CERTAIN PAYMENTS INSTRUMENTS, CREDIT CARDS, AND FUND TRANSFERS FOR UNLAWFUL INTERNET GAMBLING

MARCH 18, 2003

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PROPOSALS TO REGULATE ILLEGAL INTERNET GAMBLING

TUESDAY, MARCH 18, 2003

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:05 a.m. in room SD–538 of the Dirksen Senate Office Building, Senator Richard C. Shelby (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. The Committee will come to order.

Today, the Committee begins its consideration of the proper response of the Federal Government to the growing problem of Internet gambling. I frame the issue in such a way because I believe that there must be a Federal response to this rapidly growing social problem. As we all know, regulation of gambling has traditionally been a matter of State law. As a conservative Republican, I believe that a Federal response is appropriate to a social evil only to compliment State or local enforcement. But clearly, Internet gambling poses such a problem. Offshore Internet casinos continue to proliferate and illegal Internet gambling continues unabated, despite the fact that no State has yet authorized a virtual casino.

The very nature of Internet gambling defies regulation at the State or local level. Bets are electronic transactions in which no physical good or commodity need be transferred between the gambler and the casino. Clearly, the casinos themselves are out of the reach of even Federal authorities, and can be expected to continue to flaunt U.S. law. The only available means of effective interdiction is through the media by which the gambler and the casino interface—namely, through the Internet service provider, or ISP, or the payment system provider. This is the approach adopted in legislation that has been introduced in the Senate and the House. Senator Jon Kyl and Representative Jim Leach are the leading proponents of such legislation. Last week, Senator Kyl, who is our first witness today and has led the fight in the Senate against Internet gambling, introduced legislation, S. 627, that would establish a framework for preventing the use of our payment systems and ISP's to engage in illegal gambling. I am proud to be an original cosponsor of this important legislation. I believe this legislation represents a measured and appropriate response to a demonstrated social evil that grows worse by the day.

I describe Internet gambling as an "evil," and I do not use that word lightly. The dangers of gambling are manifest, and that is why gambling is so heavily regulated in every jurisdiction within the country in which it is permitted. The Internet makes gambling accessible to those who are most susceptible to the addictive power of gambling—the young. The Internet offers ease of access and anonymity. Children are the most computer-literate segment of our society and can find these sites with ease. Unfortunately, they are also the most susceptible to gambling's addictive powers. And the overwhelming majority of Internet casinos have no meaningful screening mechanism to block children from gambling.

Internet gambling may prove irresistible for the pathological or problem gambler trying to overcome a gambling addiction. For the recovering addict, the Internet makes casino gambling easily accessible in the comfort and privacy of your home. And, in so doing, it removes the impediment of traveling to a casino or track, and shields the problem gambler from the public stigma that may help the addict to refrain. And let us not forget—for 15 million Americans with gambling problems, gambling is every bit as addictive as alcohol or illegal drugs can be. Recovering from a gambling problem is a lifelong struggle and Internet access tilts the playing field against the addict. Dr. Howard Schaeffer, Director of Addiction Studies at Harvard Medical School, has described the effect of the Internet through a disturbing analogy. And I quote: "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced."

Gambling is not a harmless vice or a victimless crime. According to the National Academy of Sciences, "Pathological gamblers engage in destructive behaviors: They commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves." The fallout from problem gambling—domestic violence, theft, burglary, foreclosure, bankruptcy, and suicides—is as devastating to family and friends as it is to the gambler himself. And unregulated, offshore Internet casinos offer an anonymity and portability that make them a logical medium for laundering money.

I look forward to hearing the testimony of the witnesses today. I would like again to thank our first witness, our colleague from Arizona, Senator Kyl, for his continued leadership on this issue, and for his presence here today. Our second panel includes the Deputy Assistant Attorney General of the Criminal Division, as well as witnesses representing the views of the various stakeholders in this debate—the gaming and financial services industries, and collegiate athletics. I look forward to their testimony on this very grave matter. I would also like to thank my colleague, Senator Sarbanes, the Ranking Democrat on this Committee, for his continued concern about Internet gambling, and for his cooperation in organizing this hearing. Curtailing illegal gambling operations is clearly an issue on which there is bipartisan accord, and I look forward to moving forward and working with my colleagues on both sides of the aisle to move remedial legislation through Committee as quickly as possible.

Senator Sarbanes.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman.

Today, this Committee has an opportunity to hear testimony about Internet gambling. I want to commend you, Mr. Chairman, for calling a prompt hearing on this subject and I look forward to working with you on this important issue. I also want to welcome Senator Kyl, our colleague, here this morning as our lead-off witness, and to commend both him and Senator Johnson for their leadership on this important matter.

Gambling websites make possible immediate, 24-hour access to the full range of wagering opportunities. Anyone, anywhere, can bet at any hour on sporting events, and on casino games, such as virtual roulette, poker, blackjack, et cetera. Bets can be made from every home or office, or, indeed, from any computer or Internet-ready hand-held device.

The GAO estimates that there may be between 1,500 and 1,800 Internet gambling websites—1,500 to 1,800. Virtually all of those sites operate from computer servers located outside the United States, in jurisdictions in which Internet gambling has been legalized. The gambling website operators expect revenues in 2003 of at least $4 billion. Fifty to 70 percent of that amount is projected to come from wagering by individuals in the United States, despite the fact none of the States permit Internet gambling, and only one State, Nevada, permits general betting on sporting events at all.

Defenders of Internet gambling assert that it is simply another example of the Internet's ability to increase personal freedom, and that we should replace outmoded laws to the contrary. They also add, in a familiar refrain, that legalizing Internet gambling could enhance Federal or even State revenues.

But the plain fact is that placement of bets, through the Internet, with offshore gambling operators undercuts American gambling regulation. The States decide the extent to which—and the ways in which—gambling is permitted within their respective borders. Federal law is designed to prevent interstate or other attempts to evade or avoid State decisions; for example, the Federal Appeals Court in New York recently held that the operator of an offshore sports book who took wagers from U.S. citizens, calling from a State where gambling was illegal, had committed a Federal crime.

Offshore Internet gambling could not attract U.S. customers without making use of our payments system. Every Internet gambler must use a credit card, fund transfer, or bank instrument to open and fund an account from which to gamble on a website. The uncertain legal status of Internet gambling—both in terms of potential criminal liability and of the collectability of gambling debts incurred over the Internet—has already led some responsible banks and Internet service providers to move away from a connection with Internet gambling websites. But those commendable private efforts do not amount to an adequate solution to the problem.

The fact that the new ways to attract potential gamblers and facilitate their wagering are clothed in the aura of the Internet should not change our ideas of what is lawful or socially responsible. This technology is being used to cloak basic judgments and considerations of what is appropriate social behavior. So they say, well, you know, it is the Internet. And all of a sudden, since it is

the Internet, somehow it is supposed to assume some validity. We have this technology and if we do not use it, somehow, we are creating something approximating a moral sin. So, I emphasize that just because we clothe it in the aura of the Internet, it shouldn't change our ideas of what is lawful or socially responsible. I am prepared to work closely with the Chairman and other Members on legislation to deal comprehensively with this important subject, and I look forward to hearing today's witnesses and to reviewing the statements submitted to the Committee.

Thank you very much, Mr. Chairman.

Chairman SHELBY. Senator Dodd.

STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman. I apologize for being a few minutes late. But I want to welcome our colleague, Senator Kyl, and thank him immensely for his work on this issue. I want to thank you, Mr. Chairman, as well for holding this hearing.

Senator Sarbanes, I only caught the last part of his remarks, but I could not agree more with him. There is this mystical quality—if it is the Internet, it must be somehow inherently good. And there are obviously wonderful benefits that have accrued to millions of people across the globe as a result of the development and the expansion of Internet services. But the idea that anything associated with it is somehow inherently going to be good, or inevitable, is troubling.

Mr. Chairman, thank you for having a very good panel of witnesses on the subject matter as well. One of the witnesses appearing on the second panel is the Attorney General from the State of Connecticut, Dick Blumenthal, who has been I think one of the longest-standing attorney generals now in the country and has done a very fine job on these issues as well. He has been very, very thoughtful and a tireless advocate for the people of our State.

I have been told that 48 of the 50 States currently allow gambling of one kind or another. Certainly, my State is an example where we have significant gambling activities. Two of the largest casinos in the world now are located in the State of Connecticut and do a very fine job, in my view, with their activities, their employment, and the like. But we are a little small State, about the size of Yellowstone National Park, and have become a major venue for people in gambling activities. Internet gambling is illegal. As we know, at least to some extent, the Federal Wire Act of 1961 was written to prevent sports betting by telephone and has been successfully applied to the Internet by some—though not all—of the Federal courts in the country. As the Attorney General from Connecticut, Mr. Blumenthal, points out in his written statement which you will hear shortly, the mere existence of the Federal Wire Act and the threat of possible criminal prosecution has been enough to discourage the establishment of online gambling websites here in the United States.

Unfortunately, there are two problems that have allowed Internet gambling websites outside of the United States to cater to Americans. First, the Wire Act was written before anyone had any idea of course, or contemplated the Internet as a means of communication and commerce, so there is some confusion about how to

apply the Act. The second problem is enforcement, obviously. Because the online casinos are physically located outside of the territory of the United States, enforcement of the Wire Act is difficult, to put it mildly.

The reality is, of course, that tens—perhaps hundreds—of thousands of Americans are going online and losing millions of dollars each day. The current estimates of online gambling suggests that Americans are losing between $1.6 billion and $4.1 billion each year to offshore Internet gambling facilities. That fact alone is not in and of itself troubling—because in our country the right to throw your money away has never been in dispute.

[Laughter.]

But online gambling poses some particular risks that have, likewise, never been in dispute. These include the risk of children's welfare, not to mention their families' finances, the risk of greater abuse and addiction, the risk of consumer fraud by operators of rigged games, and the risk of money laundering.

On the flip side, there is little to be gained in the way of new jobs and other economic benefits associated with online versus casino gambling.

The anonymity of the Internet also creates new problems. Every State in the country prohibits minors from betting. It is also illegal for adults to knowingly accept bets from children. But online gambling sites do not see their customers and they do not effectively check, of course, the age or the identity of those who are using their services. According to the Federal Trade Commission, it is now very easy for children to gamble online, especially if they have access to credit cards. This is a problem that I think the Congress must address.

I think it is wise for Congress to consider banning the use of credit cards and other financial instruments in furtherance of online gambling transactions. Indeed, I applaud the recent actions taken by Citibank, Bank of America, Chase Manhattan Bank, PayPal, and others who have started to block gambling transactions. Offshore casinos and gambling websites should not be able to take advantage of American citizens by taking advantage of our credit card system.

However, I believe that we have to be careful not to provide exceptions that will consume the rule. When Congress passed the Federal Wire Act, Congress decided that it would be a bad idea to allow the dial-a-bet industry to develop in the United States and, as far as I can tell at this point in the debate, it seems to me that the same reasoning should apply to the Internet. It is hard to see why click-a-bet services—even if sanctioned by State government—would be any better for consumers than dial-a-bet.

Obviously, this is a complex issue. However, as we consider reform, I think we must be certain that whatever Congress does in this area is carefully measured to provide the fullest possible protection to the public—especially children and their families.

So, Mr. Chairman, I look forward to the testimony of our witnesses today. I thank them for being here. And again, I thank you for holding this hearing.

Chairman SHELBY. Thank you.

Senator Kyl, your written statement will be made part of the record in its entirety. We welcome you to the Committee. Please proceed as you see fit.

STATEMENT OF JON KYL
A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman, Senator Sarbanes, and Senator Dodd. If I were still practicing law, I think I would be tempted to say, I rest my case in view of your very strong and supportive statements, which make most of the points that I would make. I will be, therefore, very, very brief.

To note the bipartisan nature of this, Paul Simon was one of the first people that helped to get me involved in this issue and I have tried to keep him up-to-date with what we have been doing in the years since we began work on this.

In December 1995, when I introduced the first Act, and then we were complaining because there were two dozen Internet gambling websites—and now, as you have noted, there are almost 2,000, according to the GAO report, with wagers estimated to be upward of $5 billion.

You have also mentioned the addiction and, indeed, referred to the testimony or the statement of Dr. Howard Schaeffer, who talked about the addictive nature of the Internet and likening it to crack cocaine.

I just saw in the paper, too, on the sports pages, the problems that Jaromir Jagr has gotten into, racking up over half a million dollars in Internet gambling losses, which just illustrates the point and especially makes it with respect to sports betting.

As you have also noted, youth are particularly susceptible to this. The college dormitories are rife with this, we are told by our friends at NCAA. And the thousands of dollars that have been lost to gambling on the Internet by students is well-documented. The American Psychiatric Association's Dr. Sheila Blum confirms that young people are particularly susceptible to Internet gambling addiction. There has also been similar testimony before the National Council on Problem Gambling.

Unfair payouts are another matter that I do not think anybody alluded to, but a national gambling impact study made this point, that anybody who gambles over the Internet is probably making a sucker bet.

Senator Dodd, you made the point that there are certain kinds of gambling permitted in most of the States, which is highly regulated, and that is the problem—this is something that is just virtually impossible to regulate. *The New York Times* recently cited one analyst who estimated that 35 percent of Internet casinos might not pay what they owe, or might fiddle with the odds in an underhanded way.

You also alluded to the problem of crime. One estimate is that up to 90 percent of pathological gamblers commit crimes to pay off their wage-earning debts.

And there is an interesting State Department report cited in the International Narcotics Control Strategy Report last year that noted, and I am quoting now: "Internet gambling executed by the use of credit cards and offshore banks represents yet another pow-

erful vehicle for criminals to launder funds from illicit sources, as well as to evade taxes."

For all of these reasons, and more, the National Gambling Impact Commission recommended that Congress address the problem of Internet gambling. We have been trying to do that now for the last several years.

As you noted, Mr. Chairman, this is both a national problem and a Federal problem because the Internet knows no State boundaries.

And it was interesting to me that when we first began this effort, the National Association of Attorneys General came back to testify before my Subcommittee of the Judiciary Committee. Now Governor of Wisconsin, then Attorney General, Jim Doyle, testified, and I am quoting him here: "The National Association of Attorneys General took that step that many of us never imagined. The organization recommended an expansion of the Federal Government's traditional law enforcement role."

Specifically, we urged the Federal Government to enact legislation to prohibit gambling on the Internet. And he has made a point of that before, that this is going to require close cooperation between the States and the Federal Government with the Federal Government playing a key role here because of the interstate nature of this problem.

As you know, the Leach-Oxley bill passed the Financial Services Committee in the House Thursday by a voice vote without amendment. The version that is before you is virtually identical to that.

I would like to thank both Senator Sarbanes and Senator Shelby, and their staffs, who have been enormously helpful to us in analyzing this. They have suggested a few changes to the legislation, all of which in my view strengthen the legislation. I appreciate the professional staff that you have put to this problem as well.

As I said, I think all of you made the case, so I will not take further time, unless you have any questions you would like to ask me.

Chairman SHELBY. Senator Sarbanes, any questions?

Senator SARBANES. No questions, Mr. Chairman.

Chairman SHELBY. Senator Dodd.

Senator DODD. No. Thank you, Jon.

Senator KYL. Thank you. Thank you very, very much for your interest in this legislation.

Chairman SHELBY. Thank you, Senator Kyl.

Moving on, our second panel will be: John G. Malcolm, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; Richard Blumenthal, Attorney General, State of Connecticut, on behalf of the National Association of Attorneys General; L. Richard Fischer, Attorney at Law, Morrison & Foerster; Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association; William S. Saum, Director of Agent, Gambling, and Amateurism Activities, National Collegiate Athletic Association; Stewart A. Baker, General Counsel, U.S. Internet Service Provider Association; and Frank Catania, President, Catania Consulting, on behalf of the Interactive Gaming Council.

We welcome all of you here today. All of your written testimony will be made part of the record in its entirety.

We will start with Mr. Malcolm.

Mr. Malcolm, welcome to the Committee.

STATEMENT OF JOHN G. MALCOLM
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. MALCOLM. Thank you, Mr. Chairman.

Mr. Chairman, Members of this Committee, thank you for inviting me to testify before you today. The issue before this Committee is one of singular importance, and I commend the Committee for holding a hearing on this issue. I would also like to commend Senator Kyl, as well as Congressmen Goodlatte and Leach, for their tireless efforts and longstanding commitment to provide law enforcement with additional tools to combat Internet gambling. Today, I am pleased to offer the views of the Department of Justice about Internet gambling.

As you all know, the number of Internet gambling sites has increased substantially in recent years. As set forth more fully in my prepared testimony, the Department of Justice has concerns about Internet gambling because of the potential for gambling by minors and compulsive gambling, the potential for fraud and money laundering, and the potential for the involvement of organized crime.

Most of these Internet gambling businesses are operated offshore in foreign jurisdictions. If these businesses are accepting bets or wagers from customers located in the United States, then these businesses are violating Federal laws, including Sections 1084, 1952, and 1955 of Title 18 of the United States Code. While the United States can bring indictments against these companies or the individuals operating these companies, the Federal Government may not be able to bring such individuals or companies to trial in the United States.

In addition to online gambling itself, the U.S. Government is also concerned about the substance and scope of advertising for online gambling. Such advertisements are omni-present on the Internet, in print ads, and over the radio. The sheer volume of advertisements for offshore sports book 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. Indeed, many of these advertisements affirmatively foster that erroneous belief.

In addition to the Federal Government, many State governments have also taken actions against online gambling. For instance, the New York State Attorney General reached an agreement with Citibank to block credit card payments of online gambling transactions by its customers. The same Attorney General recently reached an agreement with PayPal to stop processing payments from New York State customers to online gambling merchants.

On behalf of the Department of Justice, I want to thank you for inviting me to testify here today. We thank you for your support over the years and reaffirm our commitment to work with Congress to address this significant issue of Internet gambling and to cut off the transfer of funds to and from illegal Internet gambling businesses. While we have some technical and other concerns about these bills, we support the sponsors' efforts to address gambling on the Internet.

I will be happy to answer your questions.

Chairman SHELBY. Mr. Blumenthal.

STATEMENT OF RICHARD BLUMENTHAL
ATTORNEY GENERAL, STATE OF CONNECTICUT
ON BEHALF OF THE
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Mr. BLUMENTHAL. Thank you very much, Mr. Chairman, and thank you for including the Attorneys General of the States in this hearing. We have been very vocal and vigorous advocates of the kind of legislation that Senator Kyl has championed and you have aided and others on this Committee, such as Senator Sarbanes and Senator Dodd, have advocated as well. This area offers a unique opportunity, indeed, an obligation, for Federal-State cooperation.

Under current law, all of the difficulties mentioned by the U.S. Department of Justice afflict our enforcement efforts and many more. The challenge is one of enforcement against a spreading evil that has all of the very troubling social and economic impacts that Members of this Committee have described so well.

As Senator Dodd said, the appeal to children, the vulnerability to addiction, the possibility of fraud and money laundering, all are aggravated by online and Internet gambling.

I believe that the States should continue to have a role, as the legislation that we have seen suggests. The States should continue to have an enforcement role, but should be working with the U.S. Government to attack the financial infrastructure, the financial lifeblood of this spreading industry.

If we can shut down the means of payment, the credit card, financial instruments, e-payment, and other kinds of similar financial infrastructure, we can get to the root of this problem and really have an effective enforcement mechanism with tough penalties—and I urge that the penalties be tough—and without exceptions.

If I can just leave you with one thought. I believe this law should be clear, broad, unassailable, without any exceptions, even for State-sanctioned gambling. If we have exceptions, they will swallow the rule. And as much as we may be advocates of State revenue in tough economic times, and many of the State-sanctioned forms of gambling produce revenue for the State, to provide an exception for that type of gambling, I think, makes this system intolerably porous and open for abuse.

And so, I thank you for this opportunity to be with you and I look forward to the other testimony.

Chairman SHELBY. Thank you.

Mr. Fischer.

STATEMENT OF L. RICHARD FISCHER
ATTORNEY AT LAW, MORRISON & FOERSTER, LLP

Mr. FISCHER. Thank you, Chairman Shelby, Ranking Member Sarbanes, and Senator Dodd. I am Rick Fischer. I am a partner in the law firm of Morrison & Foerster. I was asked to come in here today because I have over 30 years' of experience advising banks and payment systems on compliance issues, particularly those, for purposes of this hearing, relating to blocking of Internet gambling transactions and responding to litigation and customer disputes arising out of Internet gambling.

As you have heard already, Internet gambling presents unique challenges not only for law enforcement, but also for payment sys-

tems. Internet gambling can be done entirely over the Internet. There is no need for exchange of cash or illicit goods.

And as we have heard, the casinos are typically located offshore, where Internet gambling is illegal and beyond the reach of U.S. law enforcement authorities. This makes gambling uniquely difficult to detect or control, and I think that really is the point here. As a result, efforts to address Internet gambling have focused on payment systems—you have heard that—including Visa and MasterCard. I am not here on behalf of either of those associations. I am here because the Committee staff asked me to come in as an expert in this area. These associations are composed of thousands of regulated financial institutions. They process billions of transactions for millions of merchants located throughout the world. Internet gambling casinos do, in fact, seek payment from the associations or, really, from their card-issuing members.

But those card issuers and the associations have no interest in these illegal Internet gambling transactions. In fact, system rules in both associations prohibit the use of cards for any illegal transactions. Internet gambling transactions in particular have led to costly litigation. I have advised clients in and through that litigation. And also, customer disputes, including disputes with customers who otherwise are model customers. Internet gambling also affects the ability of cardholders to meet their account obligations generally, not just these transactions, but generally. As a result, they create risks that extend far beyond the gambling transactions both to reputational risks and regulatory responses.

Therefore, card issuers and the associations have taken steps to limit the use of cards for this purpose. We have heard reference to some of those already. But more specifically, the associations require gaming merchants to use a combination of codes—gaming codes and electronic commerce codes—to enable those transactions to be blocked. And in fact, now most major card-issuers already do block those transactions. According to a December report from the GAO, the Internet casinos now estimate that four out of every five requests for credit card payments are denied.

Blocking these transactions, though, is no small undertaking since the associations typically process thousands of transactions every second. For example, Visa alone processes between 3,000 and 6,000 transactions every second. As a result, the associations and their members must rely on coding systems to identify these Internet gambling transactions and to block those transactions.

It is also important to recognize some of these transactions are miscoded and, in fact, as a result, some transactions will escape the blocking mechanisms.

It is also important to recognize that although the legislation is directed at illegal Internet gambling transactions, not all Internet gambling transactions are illegal. For example, a U.S. cardholder who is visiting London or, in fact, has moved to London for a period of time, using a U.S. bank card, can engage in Internet gambling in the United Kingdom, where it is completely legal.

As a result, what the coding systems can say is that these transactions are likely Internet gambling transactions. They cannot say whether they are legal or illegal. Therefore, with the current blocking mechanisms, all transactions identified as Internet gambling

transactions are blocked. This means both legal transactions and illegal transactions.

As a result, the legislation you are considering should recognize that fact and provide a safe harbor for both the card issuers and the associations that are, in fact, blocking transactions, whether or not those transactions are legal or illegal. And in fact, that safe harbor also should extend to situations where they are not covered.

Several card issuers are already blocking transactions as I have indicated, and the participants in the system are prepared to work with this Committee and the Congress and doing so in the future.

Thank you.

Chairman SHELBY. Mr. Fahrenkopf.

STATEMENT OF FRANK J. FAHRENKOPF, JR.
PRESIDENT AND CEO, AMERICAN GAMING ASSOCIATION

Mr. FAHRENKOPF. Thank you, Mr. Chairman, Senator Dodd. I am Frank Fahrenkopf, the Chairman of the American Gaming Association, which is the national trade association for the commercial casino industry and commercial casino manufacturers. We do not represent Native American casinos or the lotteries, the pari-mutuel industry, and other legal gaming. They have their own spokespeople who represent them. Our member companies are industry leaders, such as most of you have probably heard—MGM MIRAGE, Harrah's Entertainment, Park Place Enterainment, and others. We operate land-based casinos and riverboat casinos in 11 jurisdictions. The vast majority of our companies are publicly held and listed either on the New York or Nasdaq stock exchanges.

It is a pleasure to appear before you today on behalf of the AGA with regard to S. 627.

The position of the American Gaming Association has remained constant since Congress first began considering Internet gambling legislation. I think, as Senator Kyl said, it was 7 or 8 years ago when he made his first endeavor here in the Senate. The AGA maintains the view that the technology necessary to provide appropriate regulatory and law enforcement oversight does not presently exist with regard to Internet gambling so as to properly regulate the integrity of the games and the security and legality of financial transactions, and to minimize the potential for underage and pathological gambling. Unless and until those concerns can be adequately addressed, the AGA remains opposed to Internet gambling.

In addition, Mr. Chairman, as we review any bills here in the Congress of the United States with regard to gaming legislation, we look at them to try to meet three tests. One, any legislation should not create an unfair advantage for any one segment of the gaming industry. Two, it should not impinge upon or curtail States' rights. And three, it should not make anything that is currently legal, illegal.

Let me quickly talk about those.

First, we would not support any bill that gives preferential treatment to any other form of legal gaming at the expense of our segment of the industry. In other words, all forms of legal gaming in this country should be treated with parity.

Second, we oppose any changes to the 200-year-old framework of the State-based oversight of gambling. Federal law has always

"back stopped" the right of each State to determine its own policies on gaming pursuant to the 10th Amendment. As a result, each State should have the right to determine whether or not it will allow any form of gambling and, if so, how it will be regulated and taxed. Federal Internet gaming legislation, we believe, should follow the model of the Wire Act and permit States to make decisions about the use of technology within their borders by licensed gaming companies.

Third, I would ask you to take into account the rapid advances in technology today and not criminalize activity that is currently legal. Our industry, like other businesses, will want to take advantage of these two technologies to make operations more efficient.

In short, we feel that it is important to draw a distinction between the use of technology to circumvent Federal and State restrictions and regulations as we believe is done by those operating illegal offshore Internet gambling sites and the use of technology by licensed operators to more efficiently deliver their services where, to whom, and under what conditions they are authorized by Federal and State law to do so. Any changes to Federal or State laws in the pursuit of making Internet gambling illegal need not and should not be drawn so broadly as to lump the use of technology within otherwise legal limits in the same prohibited status as illegal Internet operations. I think this position is consistent with the Wire Act, which, since the 1960's, permits the use of wires for wagers and information assisting in the placing of wagers where the transactions are entirely intrastate, or between States, in which the wagering in question is legal.

Our major concern with illegal Internet gambling as it exists today is it allows the approximately 2,000 offshore websites to circumvent State policies, including current restrictions on the availability of gambling within each State. Although every State except three have some form of legalized gaming today, illegal Internet gambling makes casino gambling and sports wagering available in every State, regardless of existing Federal or State laws.

Illegal Internet gambling also allows unlicensed, untaxed, unsupervised operators to conduct business alongside gaming operators who are subject to some of the most comprehensive Federal and State controls of any industry in this country. Nearly every aspect of a commercial casino business—from licensing to operations—is strictly regulated. In the 11 States where commercial casinos are legal, they are not permitted to operate without prior State approval, which includes exhaustive background checks on key personnel and major shareholders and investors. Some States do the same for major vendor-suppliers.

In addition to State regulations, there are important Federal requirements applicable to commercial casinos and other forms of legal wagering in this country. For example, U.S. commercial casinos are subject to Federal corporate taxation, publicly traded companies comply with financial disclosure and other SEC rules. Our casinos file information reports on large winnings. We withhold Federal taxes on certain winnings. And most importantly, in this instance, our casinos adhere to antimoney laundering legislation and statutes and regulations administered by the U.S. Treasury Department's Financial Crimes Enforcement Network.

These Federal laws, rules, and regulations, as well as the States', are there to prevent abuse. Illegal Internet gambling, we believe, threatens the integrity of all business involved in legalized gambling in the United States.

In conclusion, Mr. Chairman, I would say that S. 627 attempts to find a way to address this problem by essentially banning the use of credit cards and other financial instruments to conduct illegal Internet gambling. The American Gaming Association did not oppose similar legislation in the House. We worked with Mr. Leach and Mr. Oxley's staff. I would say, however, that that support was the result of careful negotiation based upon those three rules that I talked about earlier and how we view all attempts to limit gaming. We believe that we are in the middle of evaluating the present bill by Senator Kyl, whom we have worked with for years. We just received the bill I think on Friday, so we haven't had a chance to go through it. But assuming that there are no substantial changes in the bill, we would expect to have the same position here in the Senate with Senator Kyl's bill that you are a co-sponsor of.

Thank you very much.

Chairman SHELBY. Mr. Saum.

STATEMENT OF WILLIAM S. SAUM
DIRECTOR OF AGENT, GAMBLING
AND AMATEURISM ACTIVITIES
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Mr. SAUM. Chairman Shelby, Ranking Member Sarbanes, and Senator Dodd, on behalf of the National Collegiate Athletic Association, thank you for inviting me to testify today to provide our perspective on collegiate sports wagering. This is a matter of great importance for our over one thousand colleges and unversities and hundreds of thousands of student athletes. As an individual on the NCAA staff who has spent nearly 7 years working daily on this issue, it is a matter of personal and professional importance.

I am not here today to promise that banning Internet gambling is the total answer to such an insidious problem as gambling on college sports, but it is part of the equation. The NCAA believes that there should be a prohibition on all legal and illegal sports wagering. It is about what is right for student-athletes and it is about what is right for college athletics.

The NCAA membership has adopted specific rules prohibiting athletics department staff members, conference office staff, and student-athletes from engaging in sports gambling activities, which also include Internet wagering. It is not permissible to provide information to individuals who are involved in organized gambling activities, or to solicit or accept a wager on college or professional athletics. This rule also applies to NCAA national office staff.

We have established other Association policies for activities associated with gambling. The NCAA Division I Men's and Women's Basketball Championships may not be conducted in a metropolitan area with an open legal sports book. For example, there are no men's basketball championship sites in the State of Oregon, where the lottery is based on the outcome of NFL contests. The NCAA does not permit its committees to meet or conduct formal social activities in casinos. We have also requested our corporate champions

not to engage in promotions connected to the outcome of games. For the fourth straight year, we have conducted background checks on game officials who officiate in the Division I Men's and Women's Basketball Championships to assure that they have had no involvement in sports wagering. We do the same for the national office men's basketball staff members; the agent, gambling, and amateurism activities staff members; and the members of the Division I Men's and Women's Basketball Committees.

While the Internet offers tremendous educational potential, this technology should not be used to circumvent State and Federal laws. Accessibility to the Internet is perhaps the greatest reason for concern regarding Internet gambling. Many students have unlimited use of the Internet and most of their residences are wired for Internet access. In fact, there may be no group in this country who has more readily available access to computers and the Internet than college students. For the NCAA, the potential exists for a student-athlete to place a wager via the Internet and then attempt to influence the outcome of the contest while participating on the court or the playing field. Our students, many of whom have access to credit cards, are lured into online gambling by unscrupulous operators. A recent Nellie Mae study revealed that 90 percent of 20-year-olds have credit cards, with the average number of cards being four and the average debt being approximately $2,200. The proliferation of Internet gambling is fueling the growth of illegal sports gambling on college campuses across our country.

As an organization, we have committed to conducting national research regarding student-athletes and sports gambling. We recognize that estimates indicate more than $3 billion will be wagered at approximately 2,000 Internet gambling sites in 2003, with 50 to 70 percent of that total coming from the United States.

The Association has developed relationships with and made presentations to various law enforcement groups, including the FBI and the U.S. Attorney General's advisory group, campus security officers, coaches associations, and campus student life personnel. This spring, we are again reaching hundreds of our Association members through sessions about sports wagering at our annual compliance seminars.

We use various tools to educate our student-athletes and coaches with our messages about sports wagering. Among those initiatives are locker room visits with members of the men's and women's Final Four, the Frozen Four teams, and the finalists of the College World Series. Our approach is truly grassroots, and must be.

It is important to remember that the NCAA is a member of the higher education community. Among our primary functions are those of providing athletics participation opportunities within the framework of higher education and providing protection for student-athletes. We are about education and providing information to our membership that can lead to life-changing experiences both in the classroom and on the field. Our mission as an Association is to build an infrastructure of awareness and support to equip those involved with student-athletes with the tools to educate them about damaging influences, including sports wagering.

We are not an organization poised to infiltrate illegal gambling networks. We are not an organization with the authority or the

charge to investigate illegal gambling activities on college campuses or elsewhere. We have, and continue to, process cases involving sports wagering when they come within the authority of our organization. We have brought attention for more than 5 years to a problem we would prefer did not exist, which is there is illegal gambling on college campuses involving student-athletes. We support closer scrutiny of illegal wagering throughout society—this is not isolated just to our college campuses—and certainly, it should be discussed within the framework of the entire issue.

The NCAA's strategy to attack problems associated with wagering on college sports is multifocused. We continue to carry the message that sports wagering is an issue for our student-athletes and we have worked diligently to educate them about the problem. But we need assistance and we believe that strong legislation is needed to prohibit gambling over the Internet.

The system of intercollegiate athletics we have is unique to the world. We must do everything we can to protect the rich heritage, tradition, and integrity of its competition. We need to do what is right for the college game and what is right for our student-athletes and make gambling on college sports illegal everywhere, all of the time.

Thank you.

Chairman SHELBY. Mr. Baker.

STATEMENT OF STEWART A. BAKER
GENERAL COUNSEL
U.S. INTERNET SERVICE PROVIDERS ASSOCIATION

Mr. BAKER. Chairman Shelby, Ranking Member Sarbanes, and Senator Dodd, my name is Stewart Baker. I am here on behalf of the U.S. ISP Association. But I am not here to tell you that everything that happens on the Internet is a good thing.

We know that very well because our members have permanent staff who do nothing but track down unlawful activity on the Internet and put a stop to it. We work closely with the Justice Department and John Malcolm and also with the attorneys general.

I am here to tell you that if you are going to try to regulate activity on the Internet, the best way to do it is in a fashion that takes into account how the technology works.

In our written testimony, we have laid out some principles that we think allow the Government to deal with unlawful activity in ways that properly take account of how the Internet works.

In that context, there are two or three principles that are worth bearing in mind.

ISP's control parts of the Internet. No one controls the whole thing. The parts that ISP's control, they are happy to take action. When they get notice from courts that unlawful activity is taking place there, they will put an end to it. And all we ask is that the notice that we receive of the unlawful activity come in an orderly way so that we can actually identify that it is official and correct.

There are a couple of things that we ask that you not do. And that is, please do not ask us to monitor and take responsibility for being sure that everything that happens on our network is lawful. That is like asking the phone company to make sure that every conversation that occurs on the phone is lawful. Also, please do not

ask us to try to block activities that are outside of our network some place else on the Internet. That doesn't work and in the long run, it will cause the Internet to cease to function properly.

Those are the basic principles. If I could take a personal moment.

I am a former General Counsel of the National Security Agency, Senator Shelby. And I have to say that the report, the opinion that you have issued on the causes of September 11 is the most insightful, the most eloquent statement of the problems that the community faced, and we all owe a debt of gratitude to you for producing that report.

Chairman SHELBY. Thank you.

Mr. Catania.

STATEMENT OF FRANK CATANIA
PRESIDENT, CATANIA CONSULTING
ON BEHALF OF THE
INTERACTIVE GAMING COUNCIL

Mr. CATANIA. Chairman Shelby, Senator Sarbanes, Senator Dodd, I would like to thank you for the opportunity to testify today with regard to Internet gambling. I have been actively involved in all aspects of gaming, having served as Assistant Attorney General and Director of the New Jersey Division of Gaming Enforcement, which is the world's largest gaming regulatory enforcement agency. I have also served as Chairman of the International Association of Gaming Regulators, Chairman of the Forum of American Casino Regulators and Immediate Past President of the International Masters of Gaming Law.

Internet gambling is a controversial subject in the United States. Some opponents in Congress have advocated a total ban on Internet gambling for Americans. Supporters of legal Internet gambling have been steadily at work dispelling myths and lobbying against prohibitory legislation. As a result, very little consideration has been given to developing and proposing a practical and politically palatable regulatory scheme for legal and regulated Internet gambling in the United States. Both supporters and opponents of legal Internet gambling agree that something must be done. It is my opinion that a serious discussion of regulation, rather than prohibition, is needed.

Gambling is one of the fastest growing forms of entertainment in the world, particularly now when governments are exploring other means to produce revenue. The application of gambling to the Internet has created a market force that cannot be stopped without pulling the plug on the entire World Wide Web.

The total number of Internet gaming sites is estimated to be 1,800, as was said before, with a projected gross income of $4.3 billion for 2003. Remarkably, in spite of all attempts to place a domestic ban on Internet gambling, approximately 60 percent of this figure will come from the United States.

Internet gambling revenues are not just being generated by gamblers in the United States, but worldwide. Many countries are either embracing Internet gambling or tolerating it because there is no effective way to stop it, while some countries have actually concluded that modern technology has rendered their gambling laws obsolete.

Financial Crimes Enforcement Network recently completed a survey of how other countries are dealing with the issue of Internet gambling and they confirmed that most countries have arrived at the conclusion that legalized Internet gambling, with oversight and regulation, is a "workable solution" from both an economic and law enforcement standpoint. For example, Great Britain has recently publicly endorsed legalized and regulated Internet gambling.

U.S. Representatives John Conyers and Christopher Cannon recently introduced legislation to create a commission that would recommend ways that the Federal and State governments could potentially regulate Internet gambling.

It is my hope that the Members of this Committee will recognize that legalization and strict regulation, rather than prohibition, could achieve important policy goals. A commission could learn about the Internet gaming industry and potentially develop sensible solutions for the protection of U.S. residents and businesses.

The debate on Internet gaming needs to include discussion on how regulation can reverse the current situation where monies from U.S. citizens leave the United States with no subsequent benefit, directly or indirectly, to our Government or to our citizens. One consequence of this is the fact that no funds are dedicated for protecting children and problem gamblers through education or other programs.

Money laundering is also a major concern today. Currently, Internet gaming involves credit card transactions with a clear record of every wager. The proposed legislation, similar to Representative Leach's legislation in the House, would appoint the financial services industry as the Internet police. If credit card companies and associations decline transactions for Internet gambling, Internet gaming operators and players will be forced to use alternative payment methods. Money laundering is extremely difficult in a situation where cash is not an option and every electronic transaction is recorded. However, I would caution that a ban on credit cards and other financial instruments for Internet gaming will likely result in the development of settlement solutions that banks cannot recognize and block—such as anonymous e-cash.

This industry is a new phenomenon and requires thoughtful study. Some of the legal and technical issues a commission exploring potential regulatory schemes would look at include: Amending Federal law, preserving States' rights, cash transaction reporting practices and procedural safeguards to protect against money laundering, tax revenue sharing, random testing of games and software to ensure fairness and consumer protection, licensing requirements, background checks of qualified operators, enforcement of underage gambling statutes, and methods of identifying and helping problem gamblers.

Taxation and tax preservation are major consideration for governments. Although Congress recently extended the ban on Internet taxes, it still receives revenue from companies that participate in e-commerce. However, the Federal and State governments are currently receiving no revenue from Internet gambling.

While many in Congress view study commissions as a strategy to delay legislation, there has not been an issue more deserving of further study than Internet gaming policy. The complexities of

Internet gaming demonstrate the complexities of traditional, regulated businesses evolving to the new truly global marketplace created by the Internet.

Once again, thank you, Mr. Chairman, for the opportunity to speak here today.

Chairman SHELBY. I thank all of you. In addition to the witnesses that we have just heard from here, Dr. James Dobson, of Focus on the Family, was unable to join us today. However, he sent a strong letter in support of Congressional efforts to ban unlawful Internet gambling. That letter will be made part of the record in its entirety. But I would like to read just an excerpt from the letter, and I will quote it. This is from the letter from Dr. Dobson.

During the course of my service on the National Gambling Impact Study Commission, my fellow Commissioners and I overwhelmingly concurred that all forms of Internet gambling should be outlawed. Because several of my colleagues were themselves representatives of the gambling industry, our findings are particularly significant.

In addition, you may be aware that there is emerging data from other sources that points to the harmful consequences of online gambling. Young people and individuals who struggle with preexisting gambling addictions are among those who are especially vulnerable to the lure of this activity.

And with more and more households gaining access to the web every day, Internet gambling is poised to penetrate an even broader segment of the population. Now is the time for our Nation's leaders to put a stop to this dangerous pursuit before it wreaks further havoc on the lives of these individuals and their families across the country.

I have a few questions now.

The American Psychological Association has studied pathological gambling in the United States and Canada and found that the young suffer from gambling problems at much higher rates than the adult population. Are these findings consistent with your experience at the NCAA? And by this I mean, are young people particularly susceptible to a gambling addiction?

Mr. SAUM. Senator Shelby, that information is what we also find as we go through our investigations and review. Young people, especially athletes, have characteristics that put them at risk, such as being risk-takers, being very aggressive individuals, believing they do not do anything wrong and having great confidence in what they do, all great characteristics of great athletes. But when they go to the wrong side, it puts them at risk for gambling issues.

Chairman SHELBY. Any of us who know teenagers and who have had children and have been around children and young adults are well aware of how computer-literate and savvy these youngsters are. It is a new generation.

College students in particular are very likely to have access to the Internet, frequently in the comfort of their own dorm room or apartment. What types of efforts are being made by computer system administrators on college campuses to restrict access to Internet gambling sites?

Mr. SAUM. Our campuses, to be quite honest, still need to get better at doing what you are suggesting. We are trying to help educate them on how to do that.

We have put in some procedures and policies at our collegiate athletic level by having to check for bookmarks. Also, we issue computers to our athletes, so we continually check those also.

Chairman SHELBY. Mr. Catania, in your testimony, you call for legalizing heavily regulated Internet gambling. However, even if legalized, it stands to reason that many Internet casinos would remain offshore. Even if Internet gambling were legal in the United States, what impetus would there be for an offshore casino to move to the United States and subject themselves to regulation and to the laws? And also, how do we regulate casinos that are outside the jurisdiction of the United States?

Mr. CATANIA. Senator, I think that the first issue is if we had a regulated system here, U.S. players would not be looking offshore to play. They would be looking at the casinos that are regulated basically the same way that the casinos are regulated, land-based casinos are regulated.

I have to say that land-based casinos are probably the most regulated industry in this country, in order to make sure the players are protected.

That is what I think has to happen here. There has to be player protection. And if that occurs, then what will happen is that you then will have people moving away from the offshore and coming and playing with the companies that are regulated by the States.

Chairman SHELBY. Mr. Malcolm, do you have a comment?

Mr. MALCOLM. Yes, Senator. I think you hit the nail on the head. I think that there are places in the world in which regulation and law enforcement can be effective, and there are many places in the world in which regulation and law enforcement can be minimal or practically nonexistent. And illegal ventures tend to gravitate to those areas, for obvious reasons, as well to say that, all of a sudden, if we regulated this industry in this country, that people would not be attracted to offshore accounts, I think is to wink at reality. I believe that offshore enterprises can make themselves attractive in the same way that fraudsters today make themselves attractive in all manner of ventures.

Chairman SHELBY. How would you tell if a site is offshore or regulated? You have the World Wide Web.

Mr. MALCOLM. The short answer to your question is, not a very satisfactory answer, that we need to do a lot of gumshoe work and conduct an investigation. When you are using the Internet, it is very easy to route communications throughout the world.

Indeed, through the United States and all manner of countries, it is easy to manipulate software, to change the odds, to favor the casino in this case. Internet businesses open and close. As you have already pointed out, they frequently collect from the losers and do not pay off the winners. You have to conduct an investigation.

Chairman SHELBY. How would you design a regulatory regime that would permit a casino to determine without a doubt that the bettor in front of each terminal is not under age? That would be hard, wouldn't it?

Mr. CATANIA. It is difficult, but I have to say that even in the land-based casino where you have the physical presence of an individual who is underage, it is still difficult to keep an underage player off.

I think that there are different ways of doing the registration process that could eliminate a large percentage, if not most.

No one is going to say that it is going to be 100 percent. I could say that you could probably keep off 90 to 95 percent by the registration process, by having PIN numbers, by having that person sign up and not be allowed to wager, a limit would be placed on him until they get hard proof who that person is, and then something be sent back to that person at that address.

Chairman SHELBY. Mr. Fahrenkopf, do you have any comment?

Mr. FAHRENKOPF. Mr. Chairman, we have talked a lot here about States' rights and I think that that is something we should reflect on for a moment.

As everyone has said, this industry is very tightly regulated at the State level. There are State regulators with law enforcement oversight in every one of the 11 States where commercial casinos exist. Those regulators, those professionals, do not believe the technology now exists to adequately regulate and control.

I have people who come by my office every other day tell me that they have software that can prevent juveniles from gambling. They can prevent people in another jurisdiction where it is illegal from gambling. I always tell them—go see the Nevada Gaming Control Board. Go see the New Jersey Gaming Commission. Go to Illinois. Go to Mississippi. You have to convince those professionals first.

Chairman SHELBY. Mr. Baker, in your testimony, you state that the best way to remove gambling websites from the Internet is to get them at their source. That is, to compel service providers that actually operate the computer server on which the site resides to remove the content.

Your statement indicates that to do otherwise would force service providers to block access to nongambling websites with the same IP address. Why is it such a priority to have shared IP addresses? Won't the market solve the problem? That is, websites will migrate from IP addresses shared with blocked gambling sites, won't they? And what has been the success rate of your industry with foreign service providers in obtaining cooperation with requests to block access to gambling websites?

Mr. BAKER. The difficulty that would occur if you tried to block sites in that fashion is that, first, this is a very surprising and recent development. Because there is a shortage of numbers on the Internet, people have begun sharing them without even telling their customers that the customer now shares an actual IP address with 40 or 50 other sites. We were astonished to discover that more than two-thirds of the sites on the Internet now share their number with as many as 50 other sites.

You do not know, if you are on the Internet, that you are in that situation and you do not know that you have been blocked. Your traffic goes down without knowing why. It is actually a difficult thing to track back to determine why you might have been blocked.

Bear in mind that you have to serve blocking orders on dozens of ISP's in order to achieve effective coverage in the United States. As these sources blink out for you, if you are a perfectly innocent site that happens to be served by the same website that has the gambling operation, you do not know it is happening until perhaps days or months afterwards. That is one of the problems that arises. Many innocent sites are going to get shut down in those circumstances.

Second, the methods, as we have heard, even college campuses, which have an enormous interest in preventing access to these sites, have great difficulty actually making those methods work in practice. It is very, very difficult where you have a site that wants to reach customers and customers who want to reach the site to keep them with technical measures from finding each other.

The blocking mechanisms, though they can clog up the Internet for everybody, and will, actually probably won't prevent the most pathological gamblers from reaching the most aggressive sites.

Chairman SHELBY. The programmers could not solve that problem, could they?

Mr. BAKER. Well, there are programmers and there are counter-programmers.

[Laughter.]

Chairman SHELBY. Absolutely.

[Laughter.]

They might not want to solve that problem. It has been reported that as many as 5 percent of collegiate athletes have gambled on one of their own games, have shaved points or have provided inside information to gamblers. Does your experience bear these numbers out? Do you believe that access to Internet casinos will increase the likelihood college athletes will be tempted to bet on events in which they participate?

Mr. SAUM. We do believe those numbers. Those numbers have been reflected in two different studies. And we also have cases that we have become involved in that reflect those numbers, yes.

Chairman SHELBY. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Malcolm, what is the Administration's specific position on the legislation in the House, and the legislation that Senator Kyl has introduced here?

Mr. MALCOLM. Senator, of course, with respect to the Kyl bill, we just received it and are still analyzing it. I would say that we do have certain concerns with respect to the criminal provisions. Specifically, they would be three.

The first is that it does not cover telephone bets and a lot of these organizations that operate over the Internet receive the bets via telephone.

Second is that, in terms of being an additional tool for law enforcement to use, the criminal provisions set forth in the Kyl bill, which is 5363, states that you need to prove that unlawful Internet gambling is occurring. So, you have to prove the violation of an existing Federal law in order for this provision to apply. In terms of getting an added tool, we would question whether its utility will be particularly great.

Then the third category of concern is Section 5364(d)(2) provides a carve-out for ISP's.

I do not disagree with anything my friend Mr. Baker said about not wanting to impose additional obligations on ISP's. But the way the bill is written, it requires that ISP's get exemptions from 1084, unless they violate this provision, have actual control over bets and wagers, and operate, manage, supervise, or direct websites. That is a significantly higher standard than standard aiding and abetting theory which applies now under criminal law.

Senator SARBANES. If those three matters were appropriately addressed, does the Administration support the legislation?

Mr. MALCOLM. Senator, I think it would be fair to say that Justice, which again is still studying the bill, also has some concerns about the standards that are applied for injunctive relief. However, we are having discussions with other agencies, including Treasury, for instance, and haven't formed a position yet.

Senator SARBANES. Well, when does Justice figure that they can reach a conclusion and come to the Committee and say, "This is our position?"

Mr. MALCOLM. I think that is a fair——

Senator SARBANES. We are in the process of legislating up here, obviously. The House, they are out of committee on that. What is your position on the House bill?

Mr. MALCOLM. Senator, I believe that the concerns that I have addressed are mimicked in the Leach bill. The same criticisms would apply with respect to getting a definitive position——

Senator SARBANES. Did you enter into the legislative crafting process on the House side?

Mr. MALCOLM. I am sorry, Senator.

Senator SARBANES. Did the Department of Justice enter into the crafting of the legislation on the House side?

Mr. MALCOLM. If I may have just a moment.

[Pause.]

No, sir, we were not.

Senator SARBANES. Well, when does the Department of Justice intend to get involved?

You have a statement which is pretty strong, I thought, in terms of what the problems are. But now as I question you, we cannot get you to participate in the solution.

Mr. MALCOLM. Senator, I agree with respect to the strong statements about the concern. I believe that I have addressed three very specific points dealing with criminal liability. With respect to the concerns about the standards for injunctive relief, you have a fair criticism. We will consult with Treasury and respond to you promptly.

Senator SARBANES. Mr. Chairman, I suggest that the Justice Department get to work and let us have the benefit of their thinking.

Chairman SHELBY. I agree with you. I hope that they will get to work, sooner rather than later.

Mr. MALCOLM. I agree, Senator.

Senator SARBANES. Mr. Catania, I could not help but think as you listed all of the regulatory measures that might be advisable, or all of the matters that would be looked at by the study commission—you went right through a whole laundry list—that the current situation must really have many harmful aspects to it because you have set out a lot of things that you think any regulation would have to address. But putting that to one side, what are these alternate payments measures that you are referring to?

Mr. CATANIA. Senator, those are payment methods in which operators are able to have a card. And patrons are able to download on a particular card, very similar to an ATM card or a debit card. They download—either put on, whatever amount it is, onto that card and then use that card on the Internet.

It is not specifically used for gaming. It is used for other forms of purchases on the Internet. And there is not any type of classification as you have with credit card companies.

Senator SARBANES. They still have to use the payment system in some way, though, to realize payment, don't they?

It is not some Internet version of the hawalas, which we have heard a lot about in this Committee.

Mr. CATANIA. It is not specifically used for gaming. You would use your recash transaction and download onto that card. You can download with your credit card. You can download by sending money into that card company. It doesn't have to be a bank right here in the United States. It could be any bank that is doing it. It doesn't even need a bank to do it.

You would be inclined to do this because these companies are actually paying for them to open up the accounts because they get paid every time there is a download on to that particular card.

Senator SARBANES. Mr. Malcolm, you put your statement into the record. You did not touch on certain parts of it. But you have a long section in there on the money laundering issue. Now that is a matter that has been of key concern to this Committee. In fact, we passed a significant money laundering title after Septemeber 11. Could you just elaborate a little bit on the money laundering dimensions of this Internet gambling?

Mr. MALCOLM. Certainly, Senator. This entire industry is a cash-intensive business. It operates at a huge volume and speed. These are international transactions that frequently occur in offshore locations. There is encryption used with respect to these communications frequently, so anonymity is at a maximum.

The maintenance of records for these offshore businesses can be minimal or nonexistent, and that creates a real haven for money laundering. People who wish to move cash quickly will gravitate to casinos because banks are increasingly being regulated. And in addition to that, a number of these casinos provide financial transactions, credit payments, or whatnot. It is a very good vehicle for money laundering.

Senator SARBANES. Is it in fact so being used, do you know? Are you just telling me about its potential, or is there actual use in this respect?

Mr. MALCOLM. I would say that it is safe to say, Senator, that we have matters under investigation that indicate that criminal organizations have entered the field of Internet gambling and money laundering is certainly something that they do.

Senator SARBANES. Now, Mr. Fahrenkopf, could I ask you, how do you in the gaming industry control minors from participating?

Mr. FAHRENKOPF. That is one of the things that is subject to State regulation. Any casino that is licensed in any of the 11 States where we do business that allows minors—in fact, with casinos, Senator, it is different than, in fact, other forms of gambling in this country. You have to be 21 years of age to go into a casino.

As you know, many people can bet on the lottery at 18 or they can go to a horserace track at 18. But in the commercial casino industry, you have to be 21.

And so, just as the beverage industry has to be careful who they serve, we do our best to check the ID's of people who gamble. If

we make a mistake, we are subject to severe sanctions from the States in which we are licensed for those mistakes.

Senator SARBANES. I am reflecting my own ignorance here, but do you have to be 21 to go into the casino, can you go in if you are under 21, but you cannot engage in gambling?

Mr. FAHRENKOPF. You can go into the casino if you are under 21 if you are with an adult. In other words, in some hotels, for example, in Las Vegas, Reno, or in Mississippi or other States, where you may have to check in to get your room, you may have to walk past slot machines or part of the casino. You have to be with an adult when you do that.

Senator SARBANES. All right.

Thank you, Mr. Chairman. My time is almost up.

Chairman SHELBY. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Let me just ask the follow-up on Senator Sarbanes' question, Mr. Malcolm. Is it then the position of the Administration that you would oppose the Kyl bill as it presently is crafted?

Mr. MALCOLM. I would not say, Senator Dodd. I would say that we have concerns that we would hope to address to you shortly. I apologize for the fact that we have been remiss in not doing so, but we will respond promptly to those concerns.

Senator DODD. All right. That will be helpful. I want to underscore the point that Senator Sarbanes raised. I think that we are moving rather rapidly here, and the fact that you weren't involved in the House draft is troublesome.

Mr. MALCOLM. It is a fair criticism, Senator.

Chairman SHELBY. Senator Dodd, if you would yield for just an observation.

I cannot imagine that this Justice Department under any circumstances, headed by our former colleague, John Ashcroft, would oppose this legislation. You may not have evaluated all of it, but I cannot imagine that. I would be dumbfounded if he did.

Mr. MALCOLM. Certainly, the concern it seeks to address is of great importance to the Department.

Senator SARBANES. Can I ask something?

Senator DODD. Yes, certainly.

Senator SARBANES. The Justice Department should be more than just a somewhat acknowledging bystander in this process. You have a lot of skill down there and obviously, we want to draw upon it in order to frame a good piece of legislation.

I share Senator Dodd's view that it is troubling that apparently you weren't involved in the House process. I am trying to give you an opportunity, I think, to get into the Senate process.

Senator DODD. And the point being, obviously, that any good idea, and this is a good idea, you have heard us talk about it, that there are provisions that could be written into a good idea that can cause terrible problems for people down the road.

I think at the State level and other places, if we created exceptions here that complicate the lives of attorneys general at the State level, I think that the bill can then become a problem, even though the goals are laudable, that if in the crafting of it and the provisions included in the legislation make the ability to pursue illegal activities that much more difficult at other levels because of

what we put in here, then this becomes a bad bill, despite the laudable goals included.

So, I would be surprised as well, given the laudable goals here. We count on you guys down there to help us sort our way through this. It becomes very, very important.

Let me raise a question. I think most of the bills here impact to some extent, or could impact State lotteries. It has been raised just peripherally the issue of 18 being the age—I think, Frank, you mentioned the point that State lotteries can be conducted. Isn't it true that these bills include exemptions for State-approved gambling, which they do. And then couldn't this open up the door to Internet sales of lottery tickets.

Mr. BLUMENTHAL. If I may respond, Senator. Yes, they could and that is the reason why we oppose any exception for them.

And I would just like to emphasize because I think this dialogue has been very useful in exposing one very overriding and profoundly important fact about Internet gambling. And that is, its appeal to young people. Not just at college age, but children of the age that are now in this room. That is a fact that pervades gambling now as we see it across the country—its increasing appeal to young people.

Internet gambling provides the forum, the means, the vehicle. It is the Wild West of gambling because of its anonymity and access.

And so, reluctant as we are to handicap somewhat our own lotteries and our own State-sanctioned gambling, we would oppose any exception for lotteries or other kinds of games that are now sponsored by the State.

Indeed, many States, including Connecticut, have specific provisions of law that forbid appeals to young people. We just shut down the beginning of a new State lottery game that would have appealed to young people in our view because it used cartoon characters. But the point that you raise I think is very important.

Senator DODD. Obviously, of course, that raises the issue of credit card sales at the State level.

I am presuming then that all of you, with the possible exception of Mr. Catania, would support the Federal preemption of State law when it came to Internet sales of lottery tickets. Is that correct?

Mr. BLUMENTHAL. Much as it pains me to agree with any preemption——

[Laughter.]

—and I am not sure I speak for all of my colleagues here——

Senator DODD. Using the magical words here.

[Laughter.]

Mr. BLUMENTHAL. —in even acceding to the use of that word and agreeing with it. We believe that Federal authority should be meshed with State preclusions so as to offer support for that general policy.

Senator DODD. I will raise the question.

Mr. FAHRENKOPF. I am not sure that I could totally agree with the Attorney General. I do not speak for the lotteries, but I know them, and I am sure that there are a lot of attorney generals for States who have lotteries that would not necessarily agree with that view also.

I would have to look at the language very carefully, Senator. Again, my concerns, just to make sure about fundamental States' rights and that fundamental view that each State has the right to determine what type of gambling exists within its borders, how they are going to regulate and how they are going to tax it. So, I cannot give you a blanket yes now.

Senator DODD. But you understand the problem.

Mr. FAHRENKOPF. I understand the problem, absolutely.

Senator DODD. You can have Internet sale of a lottery ticket in Connecticut, that is not going to prohibit someone from Utah or Hawaii, the two States that do not allow any gambling, to be able to access that market, thus violating what Utah and Hawaii want to provide——

Mr. FAHRENKOPF. You have somewhat of that problem now, although it is not used with the Internet. You have the Big Game, and I am not an expert on lotteries, I think has eight or nine States that presently share the pot. They gamble. But I think you have to buy the lottery ticket in each individual State.

But there are some real concerns there. I agree with you. But I would have to see language before I could necessarily agree.

Senator DODD. Does anyone else want to comment on this point before I move to another subject matter?

[No response.]

I have raised issues over the years about the proliferation of credit cards on college campuses. I haven't been very successful with it, but I have been deeply disturbed about the proliferation, in fact, the solicitation, people receiving, when they become freshmen in college, a credit card, whether they deserve it or not, and the problems of consumer debt among young people has been a serious problem and a growing one.

I wonder if there is any knowledge or any background information to the extent of college consumer credit card debt, that is accumulated as a result of Internet gambling? Do you have any data on that?

Mr. SAUM. We have a Nellie Mae study that is not necessarily connected to the Internet, but connected to the number of credit cards and the average balances.

Sixty-seven percent of entering freshmen have credit cards. And the average balance is about $2,000. About 25 percent of freshmen have four credit cards. We are actually seeing young people come to college with credit cards. Certainly, several years ago, it was at college that they were first receiving them. But now they are coming with them.

This fall, the NCAA will survey 30,000 of our student-athletes, both male and female, in all sports, in all three divisions, about some of the very questions you just asked, and we will have really good numbers by fall.

Senator DODD. I wonder if there is any way, given the record of several of the major banks that are being very cooperative in the area of trying to curtail Internet gambling, whether or not they have accumulated information about who those gamblers are in terms of whether or not they would be able to pull out information regarding the amount of that debt that young people are accumulating? Is it related specifically to Internet gambling?

Mr. FISCHER. Senator Dodd, let me respond to that, although I am not responding on behalf of any particular issuer.

First of all, at present, if you think about four out of five of all requests for payments on credit cards these days being rejected, you can see that really, at least from a prospective basis, there is not going to be much.

When we committed to the House Members and we have committed to staff here as well, that individual issuers and the two associations would cooperate, we meant that. And so, the blocking is in place.

In terms of what is happened historically, because it is so decentralized in terms of individual issuers, I do not think you are going to see numbers in that sense. It is conceivable that you could go back and reverse engineer in terms of codes. But I think that is highly unlikely.

Senator DODD. Thank you very much. I am just curious. I saw this morning, Mr. Saum, where the NCAA made a mistake in scheduling potentially a basketball game with BYU. Now, we are assuming, since they are playing the University of Connecticut in the first game, that they won't get to a second round.

[Laughter.]

But if miracles occur, and they do, and we do a third round, you are going to have to shift them from one bracket to another.

At least that is the news story this morning.

Now, I am not promoting office pools, but how is that going to affect office pools?

[Laughter.]

Mr. SAUM. It actually is an assistance in regards to fighting office pools.

Senator DODD. There you go.

[Laughter.]

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Carper.

COMMENT OF SENATOR THOMAS R. CARPER

Senator CARPER. Thank you, Mr. Chairman, and to each of you, welcome today.

I was the Governor of Delaware for 8 years. We actually put in place slot machine gambling, gosh, about 6 or 7 years ago.

I vetoed the first bill and allowed the second one to become law without my signature. So these issues are ones that I have actually thought a little bit about in that position.

We debated in the Senate last year, legislation of a different sort, but I think it may have some connection here and I just wanted to share it with all of you.

The people who live in States with a sales tax can go to their local merchant and buy a particular item and pay sales tax for it. Many of those same people can get on the Internet and acquire from a remote vendor the same item and not pay any sales tax at all. And we are seeing a proliferation of that thing since people find purchasing over the Internet very convenient.

States are struggling, as you know, with their finances these days. Particularly States that have sales taxes are hurting. Part of

the reason why they are struggling is because they are losing sales tax revenues from remote purchases over the Internet.

We debated, and we will probably debate again this year, what we should do about that. In my own view, I think there should be a level playing field and if a person is buying from a local merchant, the brick and mortar presence, they should pay a sales tax if their State has a sales tax. We do not in Delaware. We are one of about five States who do not. And if they are buying over the Internet from a remote vendor, but the purchaser lives in a State with a sales tax, that tax should be collected and turned over to the State.

That is a long way of leading into my question. Here is my question. Is there a potential similar effect on the finances of States from Internet gambling that we have seen through the purchase of items over the Internet? And if so, has it been quantified? Has any thought been given to that?

Mr. FAHRENKOPF. I will take a shot at that, Senator.

Senator CARPER. Yes, sir.

Mr. FAHRENKOPF. We constantly do surveys, and again, I am talking about the commercial casino industry that does business in 11 States. We do not see a competitive nature.

Our analysis show that people come to Las Vegas or go to Biloxi or go to Atlantic City for other reasons than just to gamble. They go there for good shows, food, rooms, entertainment, the whole entertainment package.

That person who wants to sit in the quiet of their den with a beer playing against some computer in Belize is not really the same customer base that we have.

So, we have not been able to, in our part of the industry, see anything of that effect. There is a study, however, that was done by—and his name escapes me right now, a professor in Boston, looking at the impact of one type of gaming coming into a jurisdiction and the effect upon the lottery.

I will get you that information. There may be an analogy that can be made from it.

Mr. BLUMENTHAL. If I may offer a kind of supplement to that, just judging by the effect in Connecticut where we have two casinos operated by Federally recognized tribes.

I would concur, we do not have studies, at least that are accessible to the State, that I am aware of. However, there is a harm to the State from Internet gambling that is obvious. It has been mentioned here, on our young people, on our elderly, who become victims and who unknowingly will play these games and be unable to recover their winnings. And of course, there is no benefit to the State from any tax, nor could there be. And that is obviously one of the reasons why we are in favor of, in effect, cutting off the air supply for Internet gambling. We receive no benefit. There are just negatives for us.

Mr. FISCHER. Senator, let me bring one back to Delaware.

Obviously, a good number of card issuers are located within the State. There are no studies that I am aware of that would distinguish the two, except experience. And I think that the experience of card issues where customers take their cards and physically go to a casino location and the number of disputes that result from

those in person transactions are very small. On the other hand, the disputes and the litigation that arise out of Internet gambling transactions are much higher. Now that is not a study, but it is experience.

Senator CARPER. Thank you.

In our State, when slot machine gambling was put into place, it was established with several horse race tracks and it was put in our horse race tracks.

There was a variety of factors that I think led the legislature to support making that decision. Among the interests were to preserve open space in the northern part of our State. Delaware Park, a large race track and really, a lovely area surrounded by a lot of development and there was interest in preserving that open space that led some people to support the introduction of slot machine gambling.

In the central and southern part of our State, a place called Harrington, just south of Dover, which is the home of our Delaware State Fair every year, and a race track as well, the people who, the board of directors of the State fair board were interested in finding some alternative sources of capital investment for the fairgrounds. They saw this as something that might be helpful.

We have other legislators who are interested in helping to develop and nurture a horse-breeding industry in the central and southern part of our State. And all of those factors came together and the open space that is represented by Delaware Park is still open space. The Delaware State Fairground looks a whole lot better than it did 10 years ago, remarkable improvements have been made. And there is a burgeoning horse-breeding industry that is starting to show up in our State. So those who supported the introduction of slot machine gambling say that there has been some public benefit for our area.

You have to balance that off by the fact that we have seen a resurgence, a strong surge of growth in addictive gambling, people who are addicted to gambling, which is very unsettling.

What is the public benefit to people in this country from the introduction of Internet gambling? How does the public in this country benefit from that?

Mr. BLUMENTHAL. I think none, absolutely none. Of the many difficult questions before this body, and all of us as public officials, that is comparatively an easy one to answer. There is no benefit. There is no economic development or preservation of open space or other welcome byproduct of Internet gambling.

But I would emphasize the very important point that you have just made, Senator, which is that Internet gambling is many more times likely to lead to addictive gambling. That is, to addiction. And these studies have been done. There is one that was recently done by the University of Connecticut which I can provide to you, which shows, again, the anonymity and ease of gambling—the fact that it is done out of sight and maybe out of mind, maybe even the close relatives, until there is a crisis—is a major cause of addiction.

Mr. MALCOLM. Senator, if I may add briefly.

Senator CARPER. Yes, sir.

Mr. MALCOLM. No less a body than the American Psychiatric Society has stated, and I quote: "Internet gambling, unlike many

other forms of gambling activity, is a solitary activity, which makes it even more dangerous. People can gamble uninterrupted and undetected for unlimited periods of time."

So, I believe precisely the anonymity and the availability 24/7 makes it attractive to pathological gamblers.

Mr. CATANIA. Senator.

Senator CARPER. Yes, sir.

Mr. CATANIA. No matter what happens with this bill, if this bill is passed, it will not stop Internet gambling in this country. That is why I am saying that the alternative is regulation. If you provide regulations and all that I have said in my presentation, you are able to provide player protection to those people that do want this as a form of entertainment.

Gambling is a form of entertainment, no matter whether it is a riverboat, a land-based casino, Internet is no different. But what happens with regulations, we provide protections for the players. Otherwise, what is going to happen, yes, you are going to have those people still playing from Belize without any type of protections at all, not knowing whether the games are honest, not knowing who the people they are playing with. That will happen, unless there is some regulation, because it is not going to stop, even if you ban the use of credit cards and other banking instruments.

Senator CARPER. Okay. Gentlemen, thank you very much.

Mr. Chairman, thank you very much.

Chairman SHELBY. Mr. Fischer, your written statement indicates that illegal Internet gambling transactions have led to extensive and costly litigation on whether participating cardholders are liable for charges to their accounts. How much money have the card issuers lost on this type of litigation?

Mr. FISCHER. Chairman Shelby, there has been no money lost in the litigation at this point. Tremendous expenses. Most of the litigation is in California, some of it still ongoing.

There have been a number of cases where the amounts that were outstanding have been settled. Those obviously are losses for transactions to the industry.

There have been no penalties as a result of this. But litigation, as you know, is very expensive.

Chairman SHELBY. Gentlemen, we appreciate your testimony today.

Mr. Malcolm, we would ask again that the Justice Department work with us to address some of the issues that you raise so that we can move ahead with this legislation.

Mr. MALCOLM. We certainly will, Senator.

Chairman SHELBY. We think it is very important, not only to you, but to the States, to all of us; and also especially the future victims, that we might keep them from destroying themselves.

Mr. MALCOLM. Absolutely.

Chairman SHELBY. This hearing is adjourned.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR JIM BUNNING

Mr. Chairman, I would like to thank you for holding this very important hearing.

I do not think anyone here is not thinking about the probable military action in the Middle East. There is some hope that Saddam Hussein will seek exile, or the Iraqi military or others inside of Iraq will overthrow him. But that does not seem very likely, and it looks like many brave Americans will soon go into harm's way. Our thoughts and prayers are with those brave young men and women and their families.

We must continue, however, with the work of the Senate, and we do have a very important issue before us today. My good friend Senator Kyl has worked very hard on this bill to outlaw illegal Internet gambling for a number of years and I have worked with him. I believe he has crafted a very fine balance in this legislation. A balance that will address illegal gambling and money laundering concerns, without intruding on legal gambling.

I would especially like to applaud Senator Kyl for working with me to ensure his legislation would not harm State's rights in relation to the parimutuel gaming industry. Thoroughbred racing is not only very important to the economy of Kentucky, but also part of our heritage. Anyone who has heard "My Old Kentucky Home" sung by over one hundred thousand on the first Saturday in May knows how important horse racing is to Kentucky. I thank my good friend, Senator Kyl, for working with me to ensure his legislation does not harm Kentucky's heritage.

However, I know there are some out there who might entertain altering this bill for their constituents or gaming interests. I will be watching this bill very carefully, and reserve all of my rights as a U.S. Senator to ensure that what is legal under a State's authority regarding parimutuel betting is not harmed by legislation before the Senate. If others introduce amendments that I believe may be detrimental, I will not only oppose them, but I also may feel the need to introduce my own amendments. It is my hope that it will not come to that and we can pass this bill as is with little, if any, changes.

Once again, Mr. Chairman, I thank you for holding this important hearing.

PREPARED STATEMENT OF SENATOR ELIZABETH DOLE

I would like to express my appreciation for your holding this hearing today. In a few short years, the Internet gambling industry has exploded. According to an Internet gambling committee of the National Association of Attorneys General, there were less than 25 such sites on the Web in the mid-1990's. Today, the General Accounting Office estimates there are approximately 1,800 e-gaming websites. The GAO projects that such Internet sites could generate an estimated $5 billion in revenues this year. That figure approximates more than half of the year 2002 casino earnings in the State of Nevada.

The most serious threat in the Internet gambling arena is the virtual casinos operating offshore, beyond the reach of U.S. law. One estimate puts the number of foreign jurisdictions authorizing or tolerating Internet gambling at fifty. This includes not just the well-known bank secrecy jurisdictions of the Caribbean but other countries like Australia. The lure of lucrative licensing fees and the possibility of sharing in gambling receipts are proving to be powerful incentives to enter the Internet gambling business. Antigua and Barbuda have reportedly licensed more than 80 Internet gaming websites already, charging a $75,000–$85,000 licensing fee for a sports betting site and $100,000 for a virtual casino. A report prepared for the South African Government revealed that Internet gaming revenues could yield up to $140 million in foreign exchange.

While Internet gambling represents a jackpot for such foreign jurisdictions, it is a wheel of misfortune for far too many Americans who, with a click of a computer mouse and a credit card, can have instant, anonymous access to round-the-clock gambling from the privacy of their homes. All of the social hazards associated with problem gambling at brick-and-mortar sites are of equal, if not greater, concern when it comes to online gambling.

Furthermore, Internet gambling poses a serious problem to our youth. In the areas in which gambling is legal, strict laws have been enacted to ensure our children are prohibited from participating. In many homes the children are far more computer literate than the parents who possibly would stop a child from placing a bet with their credit card. Since our society has made a conscious decision to keep

our children away from this activity, we must take steps to ensure that online casinos do not victimize our children.

In addition to the social problems associated with Internet gambling, U.S. authorities warn that Internet gaming offers a powerful vehicle for laundering funds from illicit sources, as well as to evade taxes. A 2000–2001 Financial Action Task Force (FATF) report on money laundering typologies indicates that there is evidence in some FATF jurisdictions that criminals are using the Internet gambling industry to commit crime and to launder the proceeds thereof. The use of credit cards and the placement of sites offshore make locating the relevant parties, gathering the necessary evidence, and prosecuting those parties difficult if not impossible.

I look forward to working with my colleagues to enact a law to stop the threat of illegal Internet gambling and to protect our children.

Thank you.

PRESS RELEASE OF JON KYL

A U.S. SENATOR FROM THE STATE OF ARIZONA

MARCH 18, 2003

U.S. Senator Jon Kyl (R–AZ) will testify Tuesday before the Senate Banking Committee on behalf of legislation he authored to ban the practice of Internet gambling.

"Internet gambling is not a fun diversion, but feeds a dangerous and growing addiction," said Kyl. "It is linked to organized crime, rife with fraud, ruins credit ratings, and allows many young people to build up thousands of dollars in debt on their parents' credit cards."

"When I first proposed a ban in late 1995, there were roughly two dozen gaming sites. Today, there are nearly 2,000. Without Congressional action, nearly $5 billion will be wagered on Internet gaming sites this year alone."

Senator Kyl's bill, S. 627, applies criminal penalties of up to 5 years in prison to operators of Internet gambling sites. Legislative action was requested by a Congressional commission in 1999 and by the National Association of Attorneys General.

Internet Gambling Lures Addicts

More than 15 million Americans today suffer from a serious gambling addiction and the easy access to the Web is often an irresistible draw—what one expert from Harvard Medical School equated to a new delivery system for crack cocaine. The National Coalition Against Gambling Expansion reports as many as 90 percent of "pathological gamblers" commit crimes to pay off their debts.

Internet Gambling Linked to Crime

The FBI reports that organized crime groups are heavily involved in Internet gambling, often using it to facilitate money laundering.

Potential for Fraud

As opposed to licensed casinos, the Internet allows unlicensed, hard-to-track operators to defraud bettors and then disappear.

Targeting Young People

The National Collegiate Athletic Association reports that many college students lose thousands of dollars on gaming sites—often using their parents' credit cards. Young people use the Internet more than any other age group.

Debts Can Be Staggering

Washington Capitals hockey star Jaromir Jagr lost $500,000 from betting on sports events via an Internet site.

Senator Kyl's bill is co-sponsored by Senator Dianne Feinstein (D–CA) and Senate Banking Committee Chairman Richard Shelby (R–AL). A similar House bill was introduced by U.S. Representative Jim Leach (R–IA). A ban was approved by the House and Senate before, but not in time to become law.

PREPARED STATEMENT OF JOHN G. MALCOLM

DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

MARCH 18, 2003

Mr. Chairman and Members of the Committee, thank you for inviting me to testify before you today. The issue before this Committee is one of singular importance, and I commend the Committee for holding a hearing on this issue. I would also like to commend Senator Kyl, as well as Congressmen Goodlatte and Leach, for their tireless efforts and longstanding commitment to provide law enforcement with additional tools to combat Internet gambling. Today, I am pleased to offer the views of the Department of Justice about Internet gambling, including the potential for gambling by minors and compulsive gambling, the potential for fraud and money laundering, the potential for organized crime, and recent State actions. The Department of Justice generally supports the efforts of the drafters of these bills to enable law enforcement to cut off the transfer of funds to and from illegal Internet gambling businesses.

As you all know, the number of Internet gambling sites has increased substantially in recent years. While there were approximately 700 Internet gambling sites in 1999, it is estimated that by the end of 2003, there will be approximately 1,800 such sites generating around $4.2 billion. In addition to online casino-style gambling sites, there are also numerous offshore sports books operating telephone betting services. These developments are of great concern to the U.S. Department of Justice, particularly because many of these operations are currently accepting bets from U.S. citizens, when we believe that it is illegal to do so.

The Internet and other emerging technologies, such as interactive television, have made possible types of gambling that were not feasible a few years ago. For example, a United States citizen can now, from his home at any hour of the day or night, participate in an interactive Internet poker game operated by a computer located in the Caribbean. Indeed, a tech-savvy gambler can route his bets through computers located in other countries throughout the world, thereby obscuring the fact that he is placing his bet from the United States or from some other country where it is illegal to do so.

Gambling by Minors

Online gambling also makes it far more difficult to prevent minors from gambling. Gambling websites cannot look at their customers to assess their age and request photo identification as is possible in traditional physical casinos and Off-Track-Betting parlors. Currently, Internet gambling businesses have no reliable way of confirming that the gamblers are not minors who have gained access to a credit card and are gambling on their website. Although some companies are developing software to try to detect whether a player is old enough to gamble or whether that player is from a legal jurisdiction, such software has not been perfected and would, of course, be subject to the same types of flaws and vulnerabilities that could be exploited by hackers.

Compulsive Gambling

Unlike onsite gambling, online gambling is readily available to all at all hours and it permits the user to gamble, in many cases, anonymously. This presents a greater danger for compulsive gambling and can cause severe financial consequences for an unsuccessful player. As was recently pointed out by the American Psychiatric Society: "Internet gambling, unlike many other forms of gambling activity, is a solitary activity, which makes it even more dangerous; people can gamble uninterrupted and undetected for unlimited periods of time." Indeed, the problems associated with pathological and problem gamblers, a frighteningly large percentage of which are young people, are well-established and can be measured in the ruined lives of both the gamblers themselves and their families.

Potential for Fraud

Although there are certainly legitimate companies that are either operating or want to operate online casinos in an honest manner, the potential for fraud connected with casinos and bookmaking operations in the virtual world is far greater than in the physical realm. Start-up costs are relatively low and cheap servers and unsophisticated software are readily available. Online casinos and bookmaking establishments operate in many countries where effective regulation and law enforcement is minimal or nonexistent. Like scam telemarketing operations, online gambling establishments appear and disappear with regularity, collecting from losers and not paying winners, and with little fear of being apprehended and prosecuted.

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. There is also a danger that hackers can manipulate the online games in their favor or can steal credit card or other information about other gamblers using the site.

Potential for Organized Crime

Additionally, the Department of Justice has a concern about the potential for the involvement of organized crime in Internet gambling. Traditionally, gambling has been one of the staple activities in which organized crime has been involved. Indeed, many of the recent indictments brought against members of organized crime groups have included gambling charges. We have now seen evidence that organized crime is moving into Internet gambling.

Internet Gambling Violates Federal Law

Most of these gambling businesses are operating offshore in foreign jurisdictions. If these businesses are accepting bets or wagers from customers located in the United States, then these businesses are violating Federal laws, including Sections 1084, 1952, and 1955 of Title 18, United States Code. While the United States can bring indictments against these companies or the individuals operating these companies, the Federal Government may not be able to bring such individuals or companies to trial in the United States.

Money Laundering and Internet Gambling

Another major concern that the Department of Justice has about online gambling is that Internet gambling businesses provide criminals with an easy and excellent vehicle for money laundering, due in large part to the volume, speed, and international reach of Internet transactions and the offshore locations of most Internet gambling sites, as well as the fact that the industry itself is already cash-intensive.

It is a fact that money launderers have to go to financial institutions either to conceal their illegal funds or recycle those funds back into the economy for their use. Because criminals are aware that banks have been subjected to greater scrutiny and regulation, they have—not surprisingly—turned to other nonbank financial institutions, such as casinos, to launder their money. Online casinos are a particularly inviting target because, in addition to using the gambling that casinos offer as a way to hide or transfer money, casinos offer a broad array of financial services to their customers, such as providing credit accounts, fund transmittal services, check cashing services, and currency exchange services.

Individuals wanting to launder ill-gotten gains through an online casino can do so in a variety of ways. For example, a customer could establish an account with a casino using illegally derived proceeds, conduct a minimal amount of betting or engage in offsetting bets with an overseas confederate, and then request repayment from the casino, thereby providing a new "source" of the funds. If a gambler wants to transfer money to an inside source in the casino, who may be located in another country, he can just play until he loses the requisite amount. Similarly, if an insider wants to transfer money to the gambler, perhaps as payment for some illicit activity, he can rig the game so the bettor wins.

The anonymous nature of the Internet and the use of encryption make it difficult to trace the transactions. The gambling business may also not maintain the transaction records, in which case tracing may be impossible. While regulators in the United States can visit physical casinos, observe their operations, and examine their books and records to ensure compliance with regulations, this is far more difficult, if not impossible, with virtual casinos.

Other Recent State Actions

In addition to the Federal Government, various State governments have also taken actions against online gambling. For instance, in New York State, where unauthorized gambling is illegal, the New York State Attorney General reached an agreement with Citibank to block credit card payments of online gambling transactions by its customers. The same Attorney General recently reached an agreement with PayPal, which agreed to stop processing payments from New York State customers to online gambling merchants.

Some companies have taken steps themselves against online gambling businesses. For instance, in 2002 PayPal was acquired by E-Bay, the online auction service, which announced that it would phase out PayPal's online gambling. Both Discover and American Express have company policies that restrict the use of their credit cards for Internet gambling and prevent Internet gambling sites from being issued credit card merchant accounts.

Conclusion

On behalf of the Department of Justice, I want to thank you again for inviting me to testify today. We thank you for your support over the years and reaffirm our commitment to work with Congress to address the significant issue of Internet gambling. While we have some technical and other concerns about these bills, we support the sponsors' efforts to address gambling on the Internet. I will be happy to answer any questions that you might have.

PREPARED STATEMENT OF RICHARD BLUMENTHAL

ATTORNEY GENERAL, STATE OF CONNECTICUT

ON BEHALF OF THE

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

MARCH 18, 2003

I appreciate the opportunity to speak on the issue of Internet gambling.

Use of the Web to place bets on the starting date of a war with Iraq speaks volumes about the sordid, despicable nature of an unregulated, faceless, nameless Internet gambling industry. Internet gambling is growing. Beginning with the first Internet gambling website in 1995, the industry has exploded—Bear Stearns estimates—to more than $8 billion in revenues in 2002.

Now, without delay, clear and specific Federal measures are vital to add deterrent strength to current general prohibitions. State and Federal law enforcement authorities have the historic opportunity and obligation to work together and halt the ongoing abuse.

Internet gambling threatens the integrity of our athletic and sports institutions—from college basketball to professional football. It turns homes into betting parlors and lures bettors with pop-up advertising. If bettors finally stop playing—typically after losing thousands of dollars or maybe even after seeking counseling for gambling addiction—the industry barrages them with personal emails.

A 2002 study by the University of Connecticut found Internet gamblers are most likely to develop signs of problem gambling. The anonymity of Internet gambling makes it easier for problem gamblers to conceal their activity. These addicted gamblers do not have to explain the hours spent at a casino, OTB parlor, or face a store owner every day while purchasing hundreds of dollars in instant lottery tickets.

Congress must act now to clearly and unequivocally ban Internet gambling. There are a number of Federal laws—including the Federal Wire Act, 18 U.S.C. 1084—that provide a legal basis for prosecuting Internet gambling websites located within the United States. In fact, several years ago, a successful prosecution was upheld involving the use of the Internet for sports betting. *U.S.* v. *Cohen,* 260 F.3d 68 (2nd Cir. 1999). The presence of these laws has been enough to prevent any organization from establishing a gambling website based in our country. There is still a need for Congress to make the prohibition clear and unassailable.

Congress should enact provisions prohibiting the use of credit cards, debit cards, checks, and other financial instruments for the purposes of Internet gambling. As in our battle against money laundering and terrorism, we must take steps to eradicate the financial infrastructure for this illegal activity. If Federal law prohibits the use of credit cards and other financial instruments for Internet gambling, financial institutions are in a stronger position to reject any charge from such sources.

In fact, Citibank, Discover, American Express, PayPal and others have already announced that they will not accept charges from online gambling facilities. A Federal law would ensure full industry-wide compliance with this common sense policy. It would also prevent any online gambling business from seeking a court order for such payments. Without American dollars flowing through our credit card and debit card facilities, Internet gambling companies will be stunted if not stifled.

Any new Federal law must include Federal and State enforcement provisions as well as criminal and civil sanctions. Because of the international and interstate nature of the Internet, Federal criminal and civil enforcement is critical to the success of a law prohibiting Internet gaming and the use of credit and debit cards. States also must have enforcement authority. Many Federal consumer protection laws include authorization for State attorneys general to bring civil actions against violators of Federal law. This State enforcement role often meaningfully supplements Federal enforcement efforts and leads to greater compliance with the law's provisions.

Finally, any ban on Internet gambling and the use of financial instruments in furtherance of such gambling must be clear and broad, admitting no exceptions. I

oppose legislative proposals authorizing the use of the Internet for State-sanctioned gambling. These exceptions would almost certainly encourage States to use the Internet for State lotteries, OTB, and other gaming. These exceptions swallow the rule, leading to the use of credit card and debit cards to fund purchases of State lottery tickets and for other State gambling.

Currently, no State, except for California's Off-Track-Betting game, uses the Internet for State gaming. Few States allow use of credit and debit cards to pay for State lottery tickets and other games. An exception may create more problems by encouraging people to play on the Internet and use credit or debit cards to fund excessive gambling, creating crushing personal debt and tragedy.

Congress should take the simple, straightforward approach: Prohibit all online gambling and prohibit the use of credit and debit cards and other financial instruments for Internet gambling.

PREPARED STATEMENT OF L. RICHARD FISCHER

ATTORNEY AT LAW, MORRISON & FOERSTER, LLP

MARCH 18, 2003

Chairman Shelby, Ranking Member Sarbanes, and Members of the Committee, my name is Rick Fischer. I am a partner in the law firm of Morrison & Foerster, and practice in the firm's Washington, DC office. I have over 30 years of experience in advising financial institutions and payment systems on regulatory and compliance issues. In particular, for purposes of this hearing, I have advised card issuers and payment systems on responding to legal and operational issues involving the use of payment cards for Internet gambling transactions, including the development and implementation of procedures to block such transactions. I also have advised card issuers on questions relating to litigation and other customer disputes arising out of the use of payment cards for Internet gambling transactions. Thank you for the invitation to participate in this hearing.

Internet gambling presents unique challenges for both law enforcement and U.S. payment systems. Because Internet gambling can be conducted entirely over the Internet, transactions can be initiated quickly and quietly—entirely in the privacy of the gambler's own home, or wherever else the gambler has access to the Internet. There is no need to exchange physical cash or illicit goods between the gambler and the gambling operation. Moreover, Internet gambling operations are typically situated at offshore locations that are beyond the reach of U.S. law enforcement agencies. Authorities in these foreign locations may consider the Internet gambling operations to be not only profitable, but also fully legal under local laws and, therefore, the foreign authorities may have no incentive to shut down these operations. In addition, Internet gambling has proven to be popular for both gamblers and gambling operations. The General Accounting Office (GAO) has reported that worldwide revenues for Internet gambling in 2003 are projected to exceed $5 billion. These factors make Internet gambling uniquely difficult to detect or control.

In part because many Internet gambling operations are physically beyond the reach of jurisdictions where such transactions are illegal, efforts to address the unique and growing problem of illegal Internet gambling have included a focus on the payment systems that often have been used to fund illegal Internet gambling transactions, including the principal payment card associations—MasterCard and Visa. These associations are composed of tens of thousands of regulated financial institution members located throughout the world. Banks that are members of these associations issue credit cards and debit cards to their customers that can be used in person, over the telephone and over the Internet with merchants located throughout the world. Merchants submit proposed transactions to banks that act as acquirers of credit card and debit card transactions for authorization and, if authorized, the transactions are then submitted to the card-issuing bank for payment. The acquiring bank obtains authorization and payment from the issuing bank through the complex, worldwide communications and settlement systems established and maintained by the associations. These payment systems process billions of transactions originating at tens of millions of merchant locations throughout the world, usually delivering responses on individual transactions in seconds. Because such payment cards are the most efficient consumer payment vehicles in the world, and because payment cards are particularly well-suited for Internet and telephone transactions, illegal Internet gambling operations often seek to obtain payment from their customers through the use of payment cards.

However, payment card issuers and the associations have no interest in having their cards used for illegal transactions. In fact, for example, Visa prohibits the use of Visa branded payment cards for illegal transactions of any kind. Illegal Internet gambling transactions in particular have led to extensive and costly litigation over whether participating cardholders are liable for charges to their accounts, even when the cardholders do not dispute that they participated in the gambling transactions. Even where the illegal Internet gambling transactions do not result in litigation, they often generate severe customer relationship problems with cardholders who otherwise may be model customers. In addition, repayment problems resulting from illegal Internet gambling transactions can adversely affect the ability of cardholders to meet their account obligations generally—including those relating to legal, nongambling transactions. As a result, illegal Internet gambling transactions create credit risks for financial institutions that extend far beyond the illegal transactions themselves, as well as reputational risks and regulatory responses harmful to both the financial institutions and the payment systems. In short, the costs to the payment card industry in the United States of illegal Internet gambling transactions far exceed any benefits that could possibly be gained by the marginal additional transaction volume due to such transactions.

Consequently, both payment card issuers and the associations have taken a number of steps in their efforts to address the use of credit cards and debit cards for illegal Internet gambling. The good news is that these steps are having a demonstrable effect on the volume of Internet gambling transactions. According to a December 2002 GAO report on Internet gambling, the card industry's efforts to restrict the use of payment cards for Internet gambling has already had a substantial adverse effect on the growth and revenues of the Internet gaming industry. The bad news is that, according to this same GAO report, Internet gambling operations are already developing alternative ways to obtain payment for Internet gambling transactions, outside of the payment card systems.

As to the specifics of the payment card industry's efforts to counter illegal Internet gambling, both of the associations require Internet gaming merchants that accept association branded payment cards to use a combination of "gaming" merchant category and electronic commerce indicator codes for all Internet gambling transactions when they request authorizations from card issuers for payment card transactions. These codes are transmitted through the networks as part of the authorization message. The combination of codes informs the card issuer that the transaction is likely to be an Internet gambling transaction, thereby enabling the issuer to deny authorization for (or block) such transactions to protect the interests of both the card issuer and its cardholders. Many, if not most, card issuers already have taken advantage of this blocking capability, as well as other tools they have devised to deny authorization to any transaction coded as an Internet gambling transaction. The GAO report described earlier confirms that the blocking efforts of card issuing banks already are having an impact on Internet gambling transactions, and that, according to the GAO, some Internet casino operators now estimate that four out of every five requests for credit card payments are denied.

It is no small undertaking for payment system participants to block Internet gambling transactions even when they can be identified through coding systems; and since the associations typically process thousands of authorizations per second, both the associations and card issuers must necessarily rely on such coding systems to identify illegal Internet gambling transactions. For example, since the Visa system alone currently processes between 3,000 and 6,000 transactions a second, it is operationally impossible to individually recognize, let alone examine, payment card transactions except through their routing, financial, and transaction codes. In fact, any effort to individually examine transactions would threaten the entire operation of the payment systems that all U.S. consumers rely on to conduct instantaneous transactions around town, across the country, and throughout the world.

Because these systems rely on proper coding by merchants, the blocking may not be complete, for example, if Internet gambling operations miscode authorization messages, despite the aggressive efforts of the associations to enforce their coding rules. Also, as the GAO has recognized, blocking payment card transactions may lead to the use of other payment methods and, therefore, may not solve the problem of illegal Internet gambling. In addition, given the enormous volume of transactions handled by the payment card systems and card issuers, it is important to recognize that some Internet gambling transactions will evade even the most sophisticated detection and blocking mechanisms. For these reasons, any legislation designed to address illegal Internet gambling by focusing on the responsibilities of payment system participants to identify and block such Internet gambling transactions must recognize that mechanisms for achieving this end will not be infallible and that some transactions inevitably will leak through.

It also is important to recognize that not all Internet gambling transactions are illegal Internet gambling transactions. For example, a cardholder residing in a particular State may engage in gambling transactions at a legal Internet gambling site located in that same State in a manner where both the gambler and the gambling institution are acting in full compliance with applicable State law; or the cardholder may be purchasing nongambling items on an online casino's website, such as tickets for casino shows. Alternatively, a U.S. cardholder currently visiting, or even residing in, London may engage in gambling transactions through use of a card issued by a United States bank at a legal Internet gambling site in the United Kingdom in full compliance with applicable United Kingdom law. These intrastate and international jurisdictional and choice of law questions present complex and politically sensitive issues, but these are policy issues for Congress, the Administration, and their counterparts in the States and in other countries, rather than for payment system participants.

In addition, payment system participants have only a limited ability to differentiate between transactions. In this regard, it is important to recognize that coding mechanisms only inform the payment system and the card issuer that a transaction presented for authorization is likely to be an Internet gambling transaction; it cannot tell the payment system or the card issuer whether the particular transaction is illegal or not. As a result, the application of coding and blocking capabilities by payment systems and/or card issuers will necessarily result in the blocking of many legal, as well as illegal, transactions. In order to ensure that payment systems and individual financial institutions are not exposed to liability for contractual or regulatory violations because they failed to carry out transactions, in some cases fully legal transactions, requested by cardholders, any legislation focusing on the responsibilities of payment system participants to identify and block illegal Internet gambling transactions must provide that those engaged in attempting to block Internet gambling transactions will not be liable, by virtue of those actions, for violations of any statutory, regulatory, or contractual requirements because they have blocked, or attempted to block, any transactions coded as Internet gambling transactions, regardless of whether those transactions actually are gambling transactions or not, and regardless of whether the Internet gambling transactions actually are legal or not. In short, such a legislative safe harbor cannot be limited to blocking illegal Internet gambling transactions, but should extend to all transactions blocked in response to the statute. In addition, because payment systems and card issuers can only block Internet gambling transactions that are identified as such, the legislative safe harbor should extend to transactions which are not blocked, because they are not identified as Internet gambling transactions.

Members of Congress, and other proponents of Internet gambling legislation, have reported that illegal Internet gambling presents significant and unique risks, and payment card issuers themselves have been confronted by significant litigation and unique credit and reputational risks as a result of such transactions. As a result, several card issuers already have expressed support for pending Internet gambling legislation and I would expect card issuers generally to work with Congress to address this issue by blocking Internet gambling transactions. Most major card issuers are already doing so and, as indicated above, as a result of these industry efforts, Internet casino operators estimate that four out of every five requests for credit card payments are already denied.

Again, I appreciate the opportunity to participate in this hearing, and I would be pleased to answer questions from the Committee.

PREPARED STATEMENT OF FRANK J. FAHRENKOPF, JR.

PRESIDENT AND CEO, AMERICAN GAMING ASSOCIATION

MARCH 18, 2003

Mr. Chairman, distinguished Members of the Committee, thank you for inviting me to testify today about the American Gaming Association's position on Internet gambling.

I am Frank J. Fahrenkopf, Jr., President and CEO of the American Gaming Association (AGA). The AGA is the national trade association of commercial casino companies, gaming equipment manufacturers, and other vendor-suppliers to the gaming industry. The Association acts as a national clearinghouse for information about commercial casinos and as an advocate on Federal legislative and regulatory issues for its member companies, including tens of millions of employees, patrons, and shareholders. Other trade associations represent Native American casinos, the lot-

teries, the parimutuel industry, and other legal gaming entities. Our member companies are gaming industry leaders such as Alliance Gaming, Ameristar Casinos, Argosy Gaming, Aristocrat Technologies, Atronic Americas, Aztar, Boyd Gaming, Harrah's Entertainment, Horseshoe Gaming, IGT, Isle of Capri Casinos, JCM American, Kerzner International, Konami Gaming, MGM MIRAGE, Mikohn Gaming, Park Place Entertainment, Penn National Gaming, Pinnacle Entertainment, Shufflemaster, Station Casinos, and Wynn Resorts. Our casino companies operate land-based and riverboat casinos in 11 States across the country, and our manufacturers sell equipment to those casinos. A majority of our members are publicly held companies listed on the New York and Nasdaq stock exchanges.

On behalf of the AGA, I appreciate this opportunity to address the topic of Internet gambling generally and, more specifically, discuss our position on S. 627, a bill introduced last week by Senator Kyl that would in essence prevent the use of credit cards and other financial instruments for illegal Internet gambling.

The position of the American Gaming Association has remained constant since Congress first began considering Internet gambling legislation. The AGA maintains the view that the technology necessary to provide appropriate regulatory and law enforcement oversight does not presently exist with regard to Internet gambling so as to properly regulate the integrity of the games and the security and legality of financial transactions, and to minimize the potential for underage and pathological gambling. Unless and until those concerns can be adequately addressed, the AGA remains opposed to Internet gambling.

In addition, it is our view that any bill considered by this Committee should meet three tests: (1) It should not create an unfair advantage for any one segment of the gaming industry; (2) It should not impinge upon or curtail States' rights; and (3) It should not make anything that is currently legal illegal.

Let me briefly address each of those elements.

First, we would not support any bill that gives preferential treatment to any other form of legal gaming at the expense of our segment of the industry. In other words, all forms of legal gambling should be treated with parity.

Second, we oppose any changes to the 200-year-old framework for State-based oversight of gambling. Federal law has always "back stopped" the right of each State to determine its own policies on gambling. The 10th Amendment of the U.S. Constitution states that any right not explicitly granted to the Federal Government lies with the States or with the people. As a result, each State should have the right to determine whether or not it will allow any form of gambling and, if so, how it would be regulated and taxed. Federal Internet gambling legislation should follow the model of the Wire Act and permit States to make decisions about the use of technology within their borders by licensed gaming companies.

Finally, I would ask you to take into account the rapid advances in technology today and not criminalize activity that is currently legal. Our industry, like other businesses, will want to take advantage of these new technologies to make operations more efficient. Because some of those technologies will involve the Internet and others will involve non-Internet interactive computers, it is important that this reality is taken into account in considering any new legislation. Examples of these new technologies include common pool wagering, interactive computer systems, the use of the World Wide Web to advertise casino resorts or accept hotel and show reservations, and new technology to facilitate and safeguard the operation of intrastate account wagering on sporting events.

In short, we feel that it is important to draw a distinction between the use of technology to circumvent Federal and State restrictions and regulations (as is done today by those operating offshore Internet gambling sites) and the use of technology by licensed operators to more efficiently deliver their services where, to whom, and under what conditions they are authorized by Federal and State law to do so. Any changes to Federal or State laws in the pursuit of making Internet gambling illegal should not be drawn so broadly as to lump the use of technology within otherwise legal limits into the same prohibited status as technology used by illegal operators. This position is consistent with the policy of the Wire Communications Act, which, since the 1960's, has permitted the use of the wires for wagers and information assisting in the placing of wagers where the transactions are entirely intrastate or between States in which the wagering in question is legal.

However, our major concern with illegal Internet gambling as it exists today is that it allows the approximately 2,000 offshore websites to circumvent State policies, including current restrictions on the availability of gambling within each State. Although all States except three allow some form of legalized gambling, illegal Internet gambling makes casino gambling and sports wagering available in every State, regardless of existing Federal or State laws.

Illegal Internet gambling also allows unlicensed, untaxed, unsupervised operators to conduct business alongside gaming operators who are subject to some of the most comprehensive Federal and State controls of any industry in this country. Nearly every aspect of a commercial casino business—from licensing to operations—is strictly regulated. In the 11 States where commercial casinos are legal, they are not permitted to operate without prior State approval, which includes exhaustive background checks on key personnel and major investors. Some States do the same for major vendor-suppliers.

In addition to State regulations, there are important Federal requirements applicable to commercial casinos and other forms of legal wagering. For example, U.S. commercial casinos are subject to Federal corporate taxation, publicly traded companies comply with financial disclosure and other Securities and Exchange Commission rules, casinos file information reports on larger winnings with the IRS and withhold Federal taxes on certain winnings, and casinos adhere to antimoney laundering statutes and regulations administered by the Department of the Treasury's Financial Crimes Enforcement Network. By contrast, those engaged in the business of illegal Internet wagering in the United States from offshore are not subject to U.S. law enforcement jurisdiction on these important matters of public administration.

These Federal and State regulations exist to, among other things, guarantee the fairness of the games; ensure proper taxation of revenues; acknowledge problem gambling and offset any potential consequences; prevent underage gambling; and prevent theft, loss, embezzlement, or any other illegal activity—all safeguards that are vital to maintaining public trust and confidence in our business.

Illegal Internet gambling threatens the integrity of all businesses involved in legalized gambling in the United States. S. 627 attempts to find a way to address this problem by essentially banning the use of credit cards and other financial instruments to conduct illegal Internet gambling. The AGA does not oppose similar legislation in the House. However, that position evolved only after careful evaluation and negotiation, which could be jeopardized by any modifications that violate the three tests outlined earlier in my remarks. The AGA will need to evaluate this bill to determine if our position on it is any different than our position on the House version of this legislation. If there are no significant differences between the two versions, our position on the Senate bill will likely mirror our position on the House bill.

Despite our industry's consistent position on Internet gambling, some misperceptions persist, so I would like to take a few moments to address them.

There have been assumptions by many, particularly those in the media, that the commercial casino industry is concerned about Internet gambling because we are worried about competition from Internet gambling sites. The fact is that if Internet gambling were legalized, it is our members—the well-branded casino companies—who would be best positioned to garner the major share of the market. Many of our companies have explored Internet gambling as a business strategy, some more aggressively than others, in the event that it becomes legal here in the United States.

There is simply no comparison between the social, group-oriented entertainment experience of visiting a casino resort and the solitary experience of placing a bet or wager using a personal computer. Visiting a casino today is about much more than legal wagering opportunities. Whether measured by how people spend their time or how they spend their dollars, guests of U.S. commercial casinos are increasingly attracted as much or more by restaurants, shows, retail, recreation, and other nongaming amenities.

The view that Internet gambling is not a competitive threat to U.S. commercial casinos is shared by financial analysts at major Wall Street firms, whose job it is to analyze the competitive impact of market developments on the industries and firms they cover, including the major publicly traded gaming companies the AGA represents.

Another common misperception is that the State of Nevada has legalized Internet gambling. The fact is that with Internet gambling growing by leaps and bounds, Nevada, the world leader in the gaming industry, believed it had the responsibility to step forward and act to determine what current and future regulatory actions might be taken in this area. As a result, the Nevada legislature passed a bill in 2001 authorizing the Nevada Gaming Commission, the State body that sets regulatory policy, to promulgate regulations IF—and that was a big IF—certain conditions could be met: (1) The State had to be in compliance with all Federal laws; (2) There had to be an effective way to restrict access to those under age 21; (3) There had to be an effective way to limit access to those residing in jurisdictions that permitted Internet gambling; and (4) It had to be determined that Internet gambling would promote the general welfare of the State.

The legislation established a licensing framework similar to the stringent requirements already in place to acquire a casino operator's license. Only existing Nevada licensees were eligible to become licensed Internet gambling operators. There were other requirements, depending on the location of the establishment within the State, that required existing licensees to have either a resort hotel, a certain number of rooms or seats or have held a license for at least 5 years. Each licensee would be required to pay a fee of $500,000 for the first 2 years, in addition to a renewal fee of $250,000 a year. In addition, each operator would be required to pay a 6.25 percent tax on gross gaming revenue, the same tax rate paid by the land-based casino. Identical licensing requirements would apply to equipment manufacturers and suppliers. Any operators who created a site without the proper license would be subject to felony prosecution.

While they were not spelled out in the legislation, other factors were considered by the Nevada Gaming Commission to provide additional safeguards for customers who might not be able to gamble responsibly. The Commission was going to ensure self-exclusion for individuals who wanted to prevent their access. It also planned to establish betting limits and time limits that would apply to not just one site but across all Nevada Internet gambling sites.

Recently, activity in Nevada to legalize Internet gambling came to a screeching halt when the first of those conditions set forth in the legislation was not met: According to an August 2002 letter from the U.S. Department of Justice, the Federal Government declared Nevada's proposal illegal under the 1961 Wire Act. Today, this view is in direct conflict with a November 2002 decision by the U.S. Court of Appeals for the Fifth Circuit (*Thompson* v. *MasterCard International et al.*), which affirmed a lower court ruling that sports betting conducted over the Internet is illegal, but casino games are legal. Perhaps today when you hear from the Justice Department you will learn how they plan to proceed now that the courts have reached a different conclusion.

Another area of confusion is the differing views of our member companies on Internet gambling. As I mentioned earlier, some of our member companies already are pursuing Internet gambling as part of their business strategies. MGM MIRAGE, for example, has launched an Internet gambling site on the Isle of Man. The difference between the MGM MIRAGE site and other sites located offshore is that *www.playmgmmirage.com* is located in a jurisdiction that has instituted tight regulatory requirements and limited its licenses to a small number of companies that met strict criteria. The MGM MIRAGE site only accepts wagers from jurisdictions where Internet gambling is clearly legal—in other words, not from the United States—and is employing technology to address concerns about underage gambling and problem gambling. If MGM MIRAGE were to engage in conduct in direct contrast to regulatory requirements in its U.S. jurisdictions, it could jeopardize the company's casino licenses in Nevada, Mississippi, and Michigan. When you work in a privileged industry such as the gaming industry, you must adhere to certain standards wherever you conduct your business.

The bottom line is that the AGA is a trade association. Our members may make different business decisions as individual companies, but they also recognize the need to reach consensus on some of those issues as an industry. While we may be taking slightly different paths, we all share one thing in common: We are all opposed to illegal, unregulated gambling.

Thank you again for the opportunity to discuss our views on questions surrounding Internet gaming. I would be pleased to answer any questions you may have on this matter.

PREPARED STATEMENT OF WILLIAM S. SAUM

DIRECTOR OF AGENT, GAMBLING, AND AMATEURISM ACTIVITIES
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

MARCH 18, 2003

Chairman Shelby, Senator Sarbanes, and the other distinguished Members of the Committee, on behalf of the National Collegiate Athletic Association, thank you for inviting me to testify today to provide the Association's perspectives on collegiate sports wagering. This is a matter of great importance to the more than 1,000 colleges and universities that are members of the NCAA and to the hundreds of thousands of student-athletes who participate in intercollegiate athletics annually. As an individual on the NCAA staff who has spent nearly 7 years working daily on this issue, it is a matter of personal and professional importance, as well.

Our message to you today is simple: We are asking you to do what is right for the college game and what is right for the young people who have earned the privilege of participating in those games. We are asking you to take steps to eliminate the opportunity for individuals to place bets on intercollegiate sports contests on the Internet.

I am not here to promise that banning Internet gambling is the total answer to such an insidious problem as gambling on college sports, but it is part of the equation. The NCAA believes that there should be a prohibition on all legal and illegal sports wagering. It is about what is right for student-athletes. It is about what is right for college athletics.

NCAA Sports Wagering Policies and Rules

The NCAA has a clear, direct policy regarding sports gambling. The NCAA's position on sports gambling is this: *The NCAA opposes all forms of legal and illegal sports wagering. Sports wagering has the potential to undermine the integrity of sports contests and jeopardizes the welfare of student-athletes and the intercollegiate athletics community. Sports wagering demeans the competition and competitors alike by a message that is contrary to the purposes and meaning of sport. Sports competition should be appreciated for the inherent benefits related to participation of student-athletes, coaches and institutions in fair contests, not the amount of money wagered on the outcome of the competition. For these reasons, the NCAA membership has adopted specific rules prohibiting athletics department staff members and student-athletes from engaging in gambling activities as they relate to intercollegiate or professional sporting events.*

The NCAA membership has adopted specific legislation prohibiting athletics department staff members, conference office staff and student-athletes from engaging in sports gambling activities, which include Internet wagering. It is not permissible to provide information to individuals who are involved in organized gambling activities, or solicit or accept a wager on college or professional athletics. This rule also applies to NCAA national office staff.

In addition, in 2000, the membership imposed stricter sanctions on those who violate our rules. Student-athletes who participate in point-shaving activities or who solicit or accept bets that involve their own institution lose all of their remaining eligibility. Those who are found to have bet or accepted bets on intercollegiate or professional athletics are ineligible for intercollegiate competition for a minimum of 1 year and lose one season of competition.

We have established other Association policies for activities associated with gambling. The NCAA Division I Men's and Women's Basketball Championships may not be conducted in metropolitan areas with an open legal sports book. For example, there are no men's basketball championship sites in the State of Oregon, where the lottery is based on the outcome of National Football League contests. The NCAA does not permit its committees to meet or conduct formal social activities in casinos. We have also requested our corporate champions not to engage in promotions connected to the outcome of games. For the fourth straight year, we have conducted background checks on game officials who officiate in the Division I Men's and Women's Basketball Championships to assure they have had no involvement in sports wagering. We do the same for the national office men's basketball staff members; the agent, gambling, and amateurism activities staff members; and the members of the Division I Men's and Women's Basketball Committees.

NCAA Internet Gambling Studies and Statistics

While the Internet offers tremendous educational potential, this technology should not be used to circumvent State and Federal laws. Accessibility to the Internet is perhaps the greatest reason for concern regarding Internet gambling. Many students have unlimited use of the Internet and most residences are wired for Internet access. In fact, there may be no group in this country who has more readily available access to computers and the Internet than students. For the NCAA, the potential exists for a student-athlete to place a wager via the Internet and then attempt to influence the outcome of the contest while participating on the court or the playing field. Our students, many of whom have access to credit cards, are lured into online gambling by unscrupulous operators. A recent Nellie Mae study revealed that 90 percent of 20-year-olds have credit cards, with the average number of four cards and the average debt of $2,264. The proliferation of Internet gambling is fueling the growth of illegal sports gambling on college campuses across the country.

As an organization, we have committed to conducting national research regarding student-athletes and sports gambling. We recognize that estimates indicate more than $3 billion will be wagered at 1,800 Internet gambling sites in 2003, with 50 to 70 percent of that total coming from the United States.

NCAA Educational Efforts

The association has developed relationships with and made presentations to various law enforcement groups, including the FBI and the U.S. Attorney General's advisory group, campus security officers, coaches associations, and campus student life personnel. This spring we are again reaching hundreds of our association members through sessions about sports wagering at our annual compliance seminars at three locations across the country.

We use a multitude of tools to educate our student-athletes and coaches with our messages about sports wagering. Among those initiatives are locker room visits with members of the men's and women's Final Four basketball teams, the Frozen Four teams, and the finalists of the College World Series. Our approach is truly grassroots and must be.

It is important to remember that the NCAA is a member of the higher education community. Among our primary functions are those of providing athletics participation opportunities within the framework of higher education and providing protection for student-athletes. We are about education and providing information to our membership that can lead to life-changing experiences, both in the classroom and on the playing field. Our mission as an association is to build an infrastructure of awareness and support to equip those involved with student-athletes with the tools to educate them about damaging influences, including sports wagering.

We are not an organization poised to infiltrate illegal gambling networks. We are not an organization with the authority or the charge to investigate illegal gambling activities on college campuses or elsewhere. We have and continue to process cases involving sports wagering when they come within the authority of the organization. We have brought attention for more than 5 years to a problem we would prefer did not exist, which is there is illegal gambling on college campuses, some involving student-athletes. We support closer scrutiny of illegal wagering throughout society—this is not isolated to college campuses—and certainly it should be discussed within the framework of the entire issue.

Conclusion

The NCAA's strategy to attack problems associated with wagering on college sports is multifocused. We continue to carry the message that sports wagering is an issue for our student-athletes and we have worked diligently to educate them about the problem. But we need assistance. We believe that strong legislation is needed to prohibit gambling over the Internet.

The system of intercollegiate athletics we have is unique to the world. We must do everything we can to protect the rich heritage, tradition, and integrity of intercollegiate competition. We need to do what is right for the college game and what is right for our student-athletes and make gambling on college sports illegal everywhere all of the time.

PREPARED STATEMENT OF STEWART A. BAKER

GENERAL COUNSEL, U.S. INTERNET SERVICE PROVIDER ASSOCIATION

MARCH 18, 2003

Mr. Chairman and Members of the Committee, my name is Stewart Baker. I serve as General Counsel to the U.S. Internet Service Provider Association (US ISPA). US ISPA is a trade association made up of major service providers. Its members include America Online, Cable & Wireless, EarthLink, eBay, Teleglobe, SBC Communications, Verizon Online, and WorldCom. US ISPA focuses on legal and policy issues that have a direct impact on the service provider industry in the areas of cybercrime, security, content liability, critical infrastructure protection, and unsolicited email. Its major goal is to work with lawmakers to formulate sound policy that avoids unintended consequences that may stifle the growth of the Internet.

We appreciate the Chairman's invitation to testify at the hearing on "Proposals to Regulate Illegal Internet Gambling." We welcome the opportunity to discuss several key principles that we believe Internet gambling legislation must contain to help foster industry and law enforcement cooperation without placing an undue burden on the service provider industry.

Service providers are committed to a safe and secure online experience for our customers. Our members go above and beyond what the law requires to combat criminal activity online, at considerable expense to themselves, because they understand the need for good corporate citizenship and because they realize that building consumer trust in their service is critical to their own business success. Among

other industry initiatives, US ISPA supports measures that encourage greater cooperation between law enforcement and service providers to combat online crime.

Our members share your opposition to criminal conduct online. All of our members rigorously cooperate actively with law enforcement to combat illegal conduct. US ISPA's members have longstanding working relationships with law enforcement at both the Federal and State level. For example, our members work to respond thousands of times daily to judicial process to furnish electronic evidence relevant to investigations, and have worked to put in place internal procedures so that their responses are both timely and effective. They likewise include explicit language in customer contracts that prohibits illegal activity and makes clear that service providers have the right to terminate the accounts of customers who act in violation of the law.

We believe that law enforcement and the service provider industry can most effectively work together to remove illegal gambling sites from the Internet by identifying its source and the service provider that controls the computer server (a machine on which users may make the website available) where that content has been placed online. Only the website operator or the service provider that controls the computer server where the material is located can make the content inaccessible to Internet users in a reliable and effective manner.

We appreciate the opportunity to testify today and work with the Committee to develop legislation that will provide an effective tool against illegal Internet gambling. The service provider industry has worked with various lawmakers in the past in attempt to strike an appropriate balance between developing effective measures to combat unlawful Internet gambling, and avoiding unworkable measures that will stifle future economic growth on the Internet. In our efforts, we have developed key principles that any Internet gambling legislation must contain before it begins to strike this appropriate balance. First, Internet gambling legislation must not require service providers to block customer access to Internet gambling sites not residing on their networks and not under their control. This type of regulatory scheme is unworkable and will disrupt e-commerce and speech on the Internet. The most effective way to combat Internet gambling is by attacking it at the source, requiring website operators or service providers that control an illegal gambling website to take it down after receiving notice from a court of the illegal activity.

Second, legislation should contain clear court-ordered notice and takedown procedures to ensure appropriate employees receive notices of illegal websites, so the service provider can quickly take down the illegal material. The notice and takedown procedures should also give these websites an opportunity to appear to refute notices for illegal activity that may not reside on the service providers networks or may not be illegal.

Third, the service providers should be given immunity from liability for good faith efforts to comply with a notice. Service providers should not be held liable for complying with a notice and the inadvertent takedown of an innocent website.

Fourth, any Internet gambling legislation should contain language that clearly states that no service provider has any duty or obligation to monitor its networks for illegal activity, or disable or block customer access to websites not under the service provider's direct control or residing on its network. Such obligations are not technically feasible in most circumstances, and in any event would create an incredible burden on the service provider industry that would have dire economic consequences.

Finally, as service providers are already subject to portions of the Wire Act, 18 U.S.C. § 1084, it is important that there be a single, clear Federal standard governing service providers' obligations with regard to gambling material that third parties place on their systems.

No Requirement for Service Providers To Block or Disable Access to Websites that Do Not Reside on Their Networks

Internet gambling legislation must not contain any requirement for service providers to block or disable access to websites that do not reside on their networks. Service providers are unable to block user access to websites on other service providers' networks with any reliability. Blocking efforts can be easily circumvented and will seriously disrupt legitimate e-commerce and speech. But, illegal gaming websites can easily circumvent blocking methods by rapidly change locations, or proliferate at multiple Internet addresses using the same Uniform Resource Locator (URL) (www._____.com/filename). This is because the actual location of a website on the Internet is not its URL (www._____.com/filename), but something called an "IP address"—a long string of numbers punctuated by periods that is sometimes visible, for example, when a user types in a URL into a browser. All devices on the Internet communicate with each other using IP addresses, but because IP addresses

are difficult for people to remember, web browsers allow users to access a site by using URL's instead of an IP address. When a user types the URL into a browser on the user's computer, that request is translated into a request for an IP address by one of many domain name system (DNS) servers located throughout the world. DNS thus operates like a set of phone books for the Internet. These DNS servers are not controlled by any one service provider. Rather, control of the domain name system is distributed among many unrelated entities in many different countries, with multiple levels of redundancy, and the various DNS servers are updated constantly.

Blocking an unlawful website by its IP address also runs the risk of seriously disrupting a large number of lawful communications and legitimate e-commerce. The main reason for this is different websites can share the same IP address. In fact, it is a fairly common practice for large web hosting companies to place a large number of customer websites on the same IP address. According to a recent study entitled "Websites Sharing IP Addresses: Prevalence and Significance," developed by Benjamin Edelman of Harvard Law School's Berkman Center for Internet and Society, finds that "eighty-seven percent of all active domain names are found to share their IP addresses with one, and more than two-third of active domain names share their addresses with fifty or more additional domains." If a service provider controlling another network attempts to block one of these websites by its IP address, it will block user access to all the other sites. This type of approach will almost certainly disrupt e-commerce by decreasing traffic to legitimate online businesses.

The only way reliably to combat illegal Internet gambling is to make sure that the content is removed from the Internet at the source where it resides on the Internet. For example, service providers in the United States and in other countries routinely cooperate with law enforcement to remove illegal content from their computer servers when it appears there. Such cooperation cuts off availability of the illegal activity. It is essential to the service provider industry that any Internet gambling legislation does not require service providers to block access to remote websites not located on their networks.

Internet Gambling Legislation Should Contain Clear Notice and Takedown Procedures

Any Internet gambling proposal, requiring service providers to remove illegal gambling sites from their networks, must contain clear court-ordered notice and takedown procedures. A lack of clear procedures has serious consequences for operators and the effectiveness of the law. Notice and takedown procedures ensure the appropriate person in a service provider will receive appropriate notice from a court, and will quickly act to remove the website from the Internet. Without a clear procedure in place, it is very possible notices could be delivered to the wrong employee (possibly a low-level employee like a customer service representative). Once received, an untrained customer service representative may not understand the importance of the notice and not act on it; thereby increasing the time it takes to remove the illegal material, and possibly opening up an operator to criminal liability. To avoid confusion, and increase the efficiency and effectiveness of the statute, Internet gambling proposals should make it clear that an appropriate officer or counsel for the service provider shall receive the notice from a court to remove illegal content. Clear and simple notice procedures will make certain that court-ordered notices are quickly acted on and decrease the burden placed on service providers.

Also, Internet gambling proposals should give service providers the ability to challenge a notice in the instance that the notice does not pertain to illegal activity. Service providers should have the ability to contest the legitimacy of a notice. Notices should not have the full weight of the law without giving a website any type of process to appear and refute a notice.

Immunity for Good Faith Efforts To Comply with a Notice

If an operator is acting in good faith under the orders of law enforcement, it should be given protection from potential lawsuits resulting in the unintentional takedown of innocent material. In an effort to combat illegal activity, it is possible for a law enforcement agent mistakenly to order the takedown of a legitimate website, not engaged in gambling. In the spirit of cooperation and compliance, a service provider will probably not question the notice, and in good faith may remove a legitimate website from the Internet. Under these circumstances, a service provider should not be held liable for cooperating and complying with a law enforcement notice to takedown a website. An operator does not determine whether or not a website contains illegal material, and should not be held accountable for mistakes made by law enforcement.

No Duty To Monitor Networks or Disable Access to Websites Not Residing on the Service Providers Network

Service providers do not have the ability or means to monitor their networks for illegal activity, nor should they be required to serve as the policemen for the Internet. This principle has been widely accepted and included in various Federal and State statutes. Any Internet gambling bill should contain language that reinforces this principle by clearly stating that the statute does not require a service provider to monitor networks for illegal activity. Any Internet gambling legislation should also contain the principle already enacted in 47 U.S.C. § 230, which protects from liability service providers who voluntarily restrict access to objectionable or unlawful material. Any provision should make plain that Section 230(c) applies to any action taken by service providers against Internet gambling or provide similar protection. At the same time, the United States should embrace the concept that requiring service providers to block customer access to websites not under the service provider's control is an ineffective and unworkable solution for the reasons described in this testimony. Language should be included in Internet gambling legislation stating that service providers do not have any duty to block or disable customer access to websites not under that service provider's control or residing on its system. Requiring service providers to block access to websites not under their control threatens the functionality of the Internet.

Single Federal Standard Governing Service Providers' Obligations

Finally, it is important that Congress adopt a single, clear standard governing service providers' obligations under Federal law for gambling content that third party users may place on service providers' networks. In particular, portions of the Wire Act, 18 U.S.C. § 1084, apply to service providers' operations. It would be very helpful if the Congress adopted a single set of requirements that govern service providers' obligations under the Wire Act, and any legislation that this Committee may adopt.

Conclusion

Members of US ISPA are committed to taking action against illegal activity on the Internet. When lawmakers craft liability rules, we ask that you do so carefully to assign liability to actual wrongdoers, while respecting free speech and legitimate e-commerce. Obviously, enforcement strategies must start with and focus on wrongdoers by deterring and punishing illegal conduct. Service providers play an important role in supporting enforcement of such laws by devoting significant resources to assisting law enforcement investigations promptly, taking down illegal sites and hypertext links to illegal material that they learn has been posted on their computer servers.

Internet gambling proposals should adopt effective, efficient enforcement approaches to illegal gambling on the Internet, approaches that are adapted to the ways that Internet technologies function. At the same time, proposals should reward service providers for quickly cooperating and complying with the law by granting immunity for potential mistakes made in the enforcement of the law.

We thank you, Mr. Chairman and Members of the Committee, for considering our views, and hope that you and other Members of this Committee will keep these principles in mind when considering what sorts of enforcement strategies should apply in the area of Internet gambling.

STATEMENT OF JEFFREY PASH

EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL FOOTBALL LEAGUE

MARCH 18, 2003

Mr. Chairman and Members of the Subcommittee. My name is Jeffrey Pash. I am the Executive Vice President and General Counsel of the National Football League. I appreciate the opportunity to submit this statement expressing the NFL's strong support for the Unlawful Internet Gambling Funding Prohibition Act (S. 627). We commend Senator Kyl, Chairman Shelby, and Senator Feinstein for introducing this important legislation. As we stated with respect to the House companion bill (H.R. 556), in a letter last September to the Chairman and Ranking Minority Member of this Committee, the NFL strongly supports this legislation. We strongly support the legislation because it would strengthen and extend existing prohibitions on gambling, including gambling on sports events, and provide enhanced enforcement tools tailored to the unique issues presented by Internet gambling. I attach a copy of our letter and ask that it be included in the record of this hearing, together with this statement.

Today, new technologies are undermining long-standing prohibitions against sports gambling. These new technologies are undermining the prohibitions on sports gambling that Congress approved when it passed the Professional and Amateur Sports Protection Act in 1992 (PASPA) (28 U.S.C. § 3702 et seq.) and the earlier statute that regulates interstate gambling, the 1961 Wire Act (18 U.S.C. § 1081 et seq.). Congress did not contemplate these new technologies when it enacted PASPA in 1992, much less when it enacted the Wire Act in 1961. We are convinced that the proposed legislation provides tools that will help combat the rapid spread of Internet gambling and protect Congress's well-established policy against sports gambling in particular.

Simply put, gambling and sports do not mix. Sports gambling threatens the integrity of our games and all the values our games represent—especially to young people. For this reason, the NFL has established strict policies relative to gambling in general and sports betting in particular. The League prohibits NFL club owners, coaches, players, and anyone else connected with the NFL from gambling on NFL games or associating in any way with persons involved in gambling. Anyone who does so faces severe disciplinary action by the Commissioner, including a potential lifetime suspension. We have posted our antigambling rules in every stadium locker room and have shared those rules with every player and every other individual associated with the NFL.

The League has also sought to limit references to sports betting or gambling that in any way are connected to our games. For example, we have informed the major television networks that we regard sports gambling commercials and the dissemination of wagering information as inappropriate and unacceptable during football game telecasts.

Commissioner Tagliabue reemphasized recently that gambling and participation in the NFL are incompatible. The Commissioner has reiterated that no NFL club owner, officer, or employee may own any interest in any gambling casino, whether or not the casino operates a "sports book" or otherwise accepts wagering on sports. The Commissioner has specifically stated that no club owner, officer, or employee may own, directly or indirectly, or operate any "online," computer-based, telephone, or Internet gambling service, whether or not such a service accepts wagering on sports.

The League also has been an active proponent of Federal efforts to combat sports gambling. We strongly supported the passage of the PASPA, and the League has worked for the past several years to promote the passage of Internet gambling legislation, including legislation sponsored as early as 1997 by Senator Kyl, whose leadership and efforts in this area have been truly outstanding. Like PASPA, the proposed legislation is a logical and appropriate extension of existing Federal law and policy. The precedents for Federal action in this area were well-canvassed by the full Judiciary Committee in its report accompanying the 1992 legislation.

The Unlawful Internet Gambling Funding Prohibition Act is a necessary and appropriate Federal response to a growing problem that, as the State attorneys general have testified in previous years, no State can adequately address on an individual basis. Ten years ago, a gambler might have used the telephone to call his bookie. Today, he simply logs on. Gambling businesses around the country—and around the world—have turned to the Internet in an obvious attempt to circumvent the existing prohibitions on gambling contained in the Wire Act and PASPA. Many offshore gambling businesses provide betting opportunities over the Internet, effectively beyond the reach of Federal and State law enforcement authorities.

The proposed legislation is needed because it updates our laws to reflect new technology. In its report accompanying the PASPA legislation over a decade ago, the Judiciary Committee noted the growth of "new technologies" facilitating gambling, including the use of automatic teller machines to sell lottery tickets, and proposals to allow "video gambling" at home. It was, in significant part, the specter of expanded gambling raised by those "new technologies" that spurred Congress to enact PASPA. In those days, the "new technologies" did not yet include the Internet. That day, however, has now come.

Internet gambling today is widespread. It is widespread largely because so little effort is required to participate. Unlike traditional casinos, which require gamblers to travel to the casino and place their bets onsite, Internet gambling allows bettors to access online wagering facilities 24 hours per day, 7 days a week. Gamblers can avoid the hassle and expense of traveling to a casino, which in many parts of the country requires out-of-State travel. Internet gamblers also can avoid the stigma that may be attached to gambling in public on a regular basis.

Internet gambling sites are easily accessible and offer a wide range of gambling opportunities from all over the world. Any personal computer can be turned into an unregulated casino where Americans can lose their life savings with the click of a mouse. Many of these gambling websites have been designed to resemble video games, and therefore are very attractive to children. But gambling—even on the Internet—is not a game. Studies have shown that sports betting is a growing problem for high school and college students, who develop serious addictions to other forms of gambling as a result of being introduced to "harmless" sports wagering.

As the Internet reaches more and more college students and schoolchildren, the rate of Internet gambling among young people is certain to rise. Because no one currently stands between Internet casinos and their gamblers to check identification, our children will have the ability to gamble on the family computer after school, or even in the schools themselves. And we must not be lulled by the paper tiger set up by proponents of Internet gambling—that children cannot access gambling websites because they lack credit cards. It does not take much effort for a child to "borrow" one of his or her parents' credit cards for the few minutes necessary to copy down the credit card number and use it to access an Internet gambling service. The problems connected with Internet gambling transcend the NFL's concerns about protecting the integrity of professional sports and the values they represent. According to experts on compulsive or addictive gambling, access to Internet sports wagering dramatically increases the risk that people will become active, pathological gamblers. The National Council on Problem Gambling has reported that sports betting is among the most popular form of gambling for compulsive gamblers. in the United States. That means that once individuals become exposed to sports betting, there is a real problem with recurrent and uncontrollable gambling. Conducting a gambling business using the Internet is illegal under the Wire Act of 1961 and indeed has been prosecuted. But as prosecutors have recognized, asserting jurisdiction over offshore gambling businesses that use the Internet can be problematic. Just as Congress enacted the Wire Act to prohibit the use of the telephone as an instrument of gambling, so Congress or should now enact specific legislation to prohibit the use of the Internet as an instrument ofgambling. In supporting the PASPA legislation to prevent the spread of legalized sports betting, Commissioner Tagliabue testified:

> Sports gambling threatens the character of team sports. Our games embody the very finest traditions and values. They stand for clean, healthy competition. They stand for teamwork. And they stand for success through preparation and honest effort. With legalized sports gambling, our games instead will come to represent the fast buck, the quick fix, the desire to get something for nothing. The spread of legalized sports gambling would change forever—and for the worse—what our games stand for and the way they are perceived.
>
> Quoted in S. Rep. No. 248, *supra,* at 4.

Left unchecked, Internet gambling amounts to legalized gambling. Its effects on the integrity of professional and amateur sports and the values they represent are just as pernicious. Just as Congress intervened to stem the spread of legalized sports gambling in 1992, so it should intervene to stem the spread of Internet gambling today.

Mr. Chairman, we applaud your efforts and those of your colleagues to address this important problem. The Unlawful Internet Gambling Funding Prohibition Act will strengthen the tools available to prevent the spread of Internet gambling into every home, office, and schoolhouse in this country, and will send the vital message—to children and adults alike—that gambling on the Internet is wrong. We strongly support the passage of this legislation. Thank you.

NATIONAL FOOTBALL LEAGUE
OFFICE OF THE COMMISSIONER OF BASEBALL

September 13, 2002

The Honorable Paul Sarbanes
Chairman
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Phil Gramm
Ranking Minority Member
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, D.C. 20510

Dear Chairman Sarbanes and Senator Gramm:

The National Football League (NFL) and the Office of the Commissioner of Major League Baseball strongly urge the Senate to take up and pass H.R. 556, the "Unlawful Internet Gambling Funding Prohibition Act" or similar legislation this year.

For over four decades since the passage of the 1961 Wire Act, Congress has had a policy against gambling on sports. Congress reaffirmed its policy with the passage of the Professional and Amateur Sports Protection Act (PASPA) in 1992. Today, new technologies are undermining this prohibition and these laws must be updated to deal with the new threat posed by sports gambling over the Internet. Without new legislation, the longstanding congressional policy against gambling on sports is in jeopardy.

Sports gambling has the potential to undermine the integrity of athletic contests and casts a shadow, real or imagined, over the games that our organizations sponsor. We are also mindful that sports gambling results in the loss of billions of American dollars each year and has proven to be a problem especially with young people in high schools and on college campuses. For these reasons, we take a tough approach against gambling activity associated with our games.

Our experience teaches that the key element of an anti-sports gambling policy is an effective enforcement mechanism. Law enforcement must be armed

with the right tools and resources to fight the Internet gambling industry, which primarily operates outside of the U.S. and has sophisticated methods to avoid compliance with U.S. law. We are convinced that the legislation poised for action in the House provides the tools necessary to combat the rapid spread of Internet gambling.

We urge the Senate to consider H.R. 556 or similar legislation so that a comprehensive solution can be enacted this year.

Sincerely,

Jeffrey Pash
Executive Vice President
and General Counsel
National Football League

John McHale, Jr.
Executive Vice President -
Administration
Office of the Commissioner of
Major League Baseball

COLORADO SPRINGS, CO 80995 • (719) 531-5181

March 14, 2003

The Honorable Richard Shelby
Chairman
U.S. Senate Banking, Housing & Urban Affairs Committee
110 Hart Senate Office Building
Washington, DC 20510

Dear Senator Shelby:

Greetings from the staff at Focus on the Family! As you know, the critical issue of Internet gambling will be discussed in the Senate Banking, Housing and Urban Affairs Committee on Tuesday, March 18th. I want to thank you for inviting me to testify at this important hearing; however, I regret that my schedule will prevent me from attending. Nevertheless, I'd like to take this opportunity to offer my enthusiastic endorsement of H.R. 21, otherwise known as the Unlawful Internet Gambling Funding Prohibition Act. I also want to encourage you to mark up a bill similar to this one in your committee as soon as possible.

If enacted, the Unlawful Internet Gambling Funding Prohibition Act will prohibit the use of checks, electronic fund transfers, credit cards and other bank instruments for the purpose of online gambling. Because existing laws do not permit Internet gambling, and in light of the reality that this type of activity is already viewed as illicit by law enforcement agencies, H.R. 21 could very well herald the end of online gambling.

During the course of my service on the National Gambling Impact Study Commission, my fellow commissioners and I overwhelmingly concurred that all forms of Internet gambling should be outlawed. Because several of my colleagues were themselves representatives of the gambling industry, our findings are particularly significant. In addition, you may be aware that there is emerging data from other sources that points to the harmful consequences of online gambling. Young people and individuals who struggle with preexisting gambling addictions are among those who are especially vulnerable to the lure of this activity. And with more and more households gaining access to the Web every day, Internet gambling is poised to penetrate an even broader segment of the population. Now is the time for our nation's leaders to put a stop to this dangerous pursuit before it wreaks further havoc in the lives of individuals and their families across the country.

I applaud your commitment to addressing this critical issue, Senator Shelby, and urge you to make every effort to see that companion legislation to H.R. 21 is marked up by your committee without delay. Thanks in advance for your attention to this matter. Best wishes to you and your staff in the many responsibilities you face.

Sincerely,

James C. Dobson, Ph.D.
President

JCD/dmd