

## Regulation of Online Gambling and Cross-border Issues

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### Abstract

Online gambling has been described as 'Britain's new obsession' and, according to statistics quoted by Panorama as many as 5.8 million people a month have visited gambling websites in the period April to September 2006.<sup>1</sup>

In the UK, the Gambling Act 2005 (which was passed in April 2005 and will come into force in September 2007) has legalised remote internet gambling subject to a licensing regime<sup>2</sup> supervised by a new regulatory body, the Gambling Commission. This paper will describe and analyse the regulatory regime set up by the Gambling Act 2005 and the Gambling Commission. It will discuss the advantages and disadvantages of allowing online gambling in view of regulatory objectives<sup>3</sup> such as preventing addiction and adverse social consequences, fairness and combating crime (such as gambling operations for money laundering purposes).

However, online gambling policy cannot easily be restricted to one particular country.<sup>4</sup> The internet allows access to foreign gambling websites, making regulation at a national level difficult to achieve.

For this purpose, it is useful to contrast the UK regime with that of other jurisdictions, where gambling is illegal and in particular the approach under federal US law. The Federal Wire Act of 1961<sup>5</sup> has outlawed some forms of cross-border or interstate gambling with US residents.<sup>6</sup> However enforcement of this prohibition and similar state laws has proved difficult. Therefore, the US Unlawful Internet Gambling Enforcement Act 2006<sup>7</sup> has made it illegal for credit card companies to process payments in respect of online gambling (sports betting and gaming) activities of US residents.

This paper will discuss the question of whether regulators are able to effectively prevent online gambling by their citizens on foreign websites and what can be achieved by national legislation on online gambling.

A related question covered by this paper is whether a state prohibiting gambling by its residents is restricting the freedom to provide services under GATS (on the basis of non-discriminatory treatment) or the EC Treaty. In this context the paper will look at the recent WTO cases brought by Antigua and Barbuda<sup>8</sup> and also the ECJ decisions on this topic (Case C-243/01 *Gambelli* and

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<sup>1</sup> <http://news.bbc.co.uk/1/hi/programmes/panorama/6165948.stm>

<sup>2</sup> Section 33 of the Gambling Act 2005

<sup>3</sup> Section 1 of the Gambling Act 2005

<sup>4</sup> The territorial scope of the Gambling Act 2005 in s.36 states that at least one piece of gambling equipment must be located in the UK, hence it does not protect consumers from foreign gambling websites.

<sup>5</sup> 18 U.S.C.A § 1084, 1961

<sup>6</sup> The Fifth US Circuit Court of Appeal has found that the Act only applies to online betting not other forms of gambling such as gaming, but this interpretation has not been confirmed by the Supreme Court and has been controversial: *In Re Mastercard International Inc International Gambling Litigation* 313 F3d 257, 262-263 (5<sup>th</sup> Circuit 2002)

<sup>7</sup> 31 U.S.C.A. §§ 5361 et sequi

<sup>8</sup> In 2003 a WTO dispute resolution panel found in Antigua's favour, the US appealed, but the Appeals Board found in 2005 largely for Antigua that the US law was discriminatory. In a recent ruling (February 2007) the WTO has reportedly found that the US has not implemented its 2005 decision:

[http://www.theregister.co.uk/2007/02/01/wto\\_us\\_online\\_gambling/](http://www.theregister.co.uk/2007/02/01/wto_us_online_gambling/) The paper will examine all three decisions, assuming of course that the latest ruling will be published in March.

others of 6. November 2003). The paper will also discuss a current case on the same issue before the French and Maltese Courts, involving a Maltese betting company.

The paper will conclude by outlining the regulatory options available to states and the jurisdictional issues involved.