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UIGEA AND THE RISE AND RISE OF GAMING & GAMBLING IN THE UK

The American Unlawful Internet Gaming Enforcement Act 2006 (UIGEA) has been controversial since its inception, when the Bush administration hastily tacked it onto the end of the unrelated 'SAFE' Port Act of 2006. Now, following a US Department of Justice opinion released at the end of December [<http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>], the future of the UIGEA is more than a little uncertain.

The UIGEA effectively buttresses the Wire Act of 1961, which renders illegal 'bets or wagers on any sporting event or contest' utilising a 'wire communication facility'. The applicability of this to forms of online non-sports gaming and gambling such as online poker has been the subject of much debate, but the Department of Justice had previously held the line that it did apply - in spite of a ruling to the contrary in 2002 by the Court of Appeal for the Fifth Circuit. Under UIGEA, businesses are prohibited from handling money related to internet gaming, where that gaming is illegal under state or federal law. Thus, the UIGEA makes it impossible for even offshore operators to use payment handlers and banks based in the US, effectively preventing individual players from funding their accounts for those forms of gaming or gambling prohibited under the Wire Act. However, among the activities that UIGEA excludes from its definition of unlawful internet wagering are fantasy sports and "any activity that is allowed under the Interstate Horseracing Act of 1978", which protects the US horserace betting industry. These seemingly arbitrary distinctions anger critics of the UIGEA. Its seemingly underhand implantation is also a source of frustration, as well as a restriction of personal liberty, for the millions of Americans who had become enthusiastic online players of poker, blackjack, roulette and the like.

Asked to clarify the Wire Act's scope by the states of New York and Illinois who are both hoping to launch an online lottery, the

Department of Justice has suggested that online gaming and gambling, provided it does not involve sports betting, should be allowed. In reaching this opinion, which was written in September, the Wire Act's relationship to the UIGEA was not considered. Nevertheless, given that the UIGEA's ostensible purpose is to shore up the Wire Act, its future is plainly in doubt. With the trial of 'Black Friday' principals John Campos and Chad Elie for violating the UIGEA due in March, an opportunity for further clarification is imminent. Federal legislation could potentially follow.

Until the past month or so, there seemed little realistic prospect of a loosening of the law. This was in spite of a 2007 WTO ruling in favour of Antigua (whose concerns were shared by the EU) that the US was in breach of its obligations to provide full market access to online gaming companies based offshore. The US settled the dispute by granting unspecified concessions in other sectors. Then, in April 2011, the founders of PokerStars, Full Tilt Poker, and Absolute Poker, the three largest internet poker companies that then accepted US players, were among those charged (along with Campos and Elie) for violations of the UIGEA. The US Attorney in New York suggested that the companies, along with their payment processors, had tried to circumvent the UIGEA by disguising gambling revenues as payments for jewellery, golf balls and various other sports paraphernalia.

Yet it now seems that UIGEA may have had its day. Its repeal is supported by members of both major parties in the US, as well as the million or more members claimed by The Poker Players Alliance. Individual states have started to make moves to legalise intra-state online gaming within their territories (the federal legislation only applies to interstate or foreign commerce), and companies are lining up to take advantage of any change in the law (as indeed they were before the April 2011 indictments). Some have suggested that there seems to have been a belated realisation at the federal level of the potential tax revenues currently being missed out on in these straitened times (*The Economist* 2011).

Whatever one's views on gaming and gambling, the ongoing story of the UIGEA highlights the difficulty that national, territorially bound governments now face in effectively prohibiting activities that can be facilitated by the internet and have become a routine part of life for so many people. It has been extremely conservatively estimated that up to 10 million Americans continued to game online even as their government insisted such behaviour was illegal. The parallels with alcohol prohibition are obvious.

The rise and rise of gaming and gambling in the UK

In comparison to the US, the UK feels like something of a gamer's paradise. Yet it is easy to forget that off-course betting was only legalised in 1960 and that proposed super-casinos in 2007-8 evoked an antagonistic wave of welfarist protectionism concerned with working-class gambling addiction. Determined to avoid a descent into an orgy of gambling, the Tory Home Secretary Rab Butler insisted that betting shops had blacked out or shuttered "dead windows" so as to offer as little enticement as possible. As Butler recalled in his memoirs, "the House of Commons was so intent on making betting shops as sad as possible, in order not to deprave the young, that they ended up more like undertakers' premises" (cited in Hey 2008). Nevertheless, up to 10,000 betting shops opened within the first six months of legalisation. Only in 1986 with the advent of further legislation were betting shops permitted to make cosmetic improvements, although this hardly amounted to the creation of gaming and gambling nirvana; hot drinks machines, seating and television feeds from racecourses were permitted (Hey 2008). Yet the betting shop business, which by the 1980s was dominated by William Hill, Ladbrokes, Coral and Mecca, was successful. A series of corporate mergers and takeovers followed as the success continued; William Hill joined the FTSE 100 in 2004 (it is now part of the FTSE 250). The online market has emerged over the last decade or so, and has allowed for development of new models such as the betting exchange; Betfair launched such an exchange in June 2000.

There can be little doubt that gaming and gambling is now within the mainstream of popular culture in the UK, as Gambling Commission statistics (2011) make abundantly clear. In the year to June 2010, 73% of Brits participated in some form of gambling. 56.2% participated in the month to March 2011. Whilst the vast majority of these people participate in the national lottery (59% in the past year, 46% in the past month), clearly there is a massive gaming and gambling constituency in the UK. They place wagers in some 9067 betting shops, 695 bingo premises, 149 casinos and 2396 arcades (as of 21st March 2011). There are also 621 lottery licences and countless National Lottery sales points.

The rise of online gaming and gambling has mirrored the earlier success of the betting shops. 11.2% of people partook in some form of remote gambling in four weeks to March 2011 (with 5.3% playing the lottery online). There are some 3.5 million active customer accounts with UK registered remote gambling sites, but of course the vast majority of online players use sites that are regulated overseas. Estimates suggest that the UK consumer remote gaming and gambling market was worth £1.9 billion in 2010, which is approximately three times the size of the British-regulated remote market. Even those who do not partake cannot help but be aware of gaming and gambling brands through their near constant advertising, particularly on TV. Ladbrokes, Bet365, Victor Chandler and a raft of online bingo and casino sites are amongst those who have run major TV ad campaigns over the past year. When a primetime ITV gameshow produced by Simon Cowell's production company and presented by Ant and Dec is based upon a gambling concept, with a final round game making use of a modified roulette wheel, then it seems clear that gambling has truly entered the realm of the conventional. Such was the format of *Red or Black*, aired in September 2011.

Gambling and the criminological gaze

Back in 1976, Downes and his colleagues wrote that "there have been remarkably few sociological attempts to account for gambling-

and this applies whether 'accounting' is taken in the sense of explanation, in the sense of understanding, or as covering both simultaneously" (1976: 11). More remarkable still is that this situation persists. Yet gaming and gambling and the way they have developed are ripe for a renewed sociological and criminological attention.

As the current debates in the US demonstrate, gaming and gambling lie at the intersection of what is considered to be licit and illicit behaviour by different groups. Even in places where such activities are legal and largely accepted, such as in the UK, there remains something of a stigma attached; the drab image of the illegal backstreet bookie has never quite been shaken off: a 'blight on Britain's high streets' as the self-styled 'queen of shops' Mary Portas (2011) would have us believe.

Furthermore, there is good evidence that the new online gaming and gambling environment is a site of crime and victimisation. Unlike land-based operations, online gambling organisations undermine the traditional relationship between physical location and effective legal jurisdiction. Globalised, decentralised and interactive, the internet enables commercial businesses to make betting facilities available to a country's population, despite their operations being situated outside of its borders. This challenges traditional enforcement strategies and questions the ability of states to invoke their national laws extraterritorially. Unsurprisingly, the anonymity, immediacy and global nature of the internet have made it an ideal tool for criminal entrepreneurs. Evidence suggests that the patchwork of regulatory networks has enabled both licensed and unlicensed 'rogue' gambling organisations to engage in theft and fraudulent practices without consequence (Banks 2012). This often involves vague terms being used to 'rule' against players, the 'palping' or voiding of (winning) bets and the refusal to make payment because the player is deemed 'professional', has not entered into the spirit of a promotion or has 'abused' the bonus awarded.

In a broader sense, gaming and gambling calls to mind the idea of the 'chaos of reward', that in late modernity any illusions as to the meritocratic nature of contemporary society have been exploded. Now, rewards are distributed seemingly at random and the link between effort and reward has been shattered (Young 2007). Those who 'take a chance' and 'play the game' are the ones who can escape the drudgery of late modern life. One is reminded of Hall et al's (2008) estate lads who knew they would 'make it big' one day. How and when, they could not say. What better expression of this kind of casino capitalist culture than casinos, bookies, and online gambling emporia themselves?

Gaming and gambling, their growth, and the particular way they have developed over the last few years, would appear to us to express something quite fundamental about the nature of social life in the post-industrial, post-social world of the advanced capitalist heartlands. They serve as a prism through which the hopes and fears of late modern consumers can be viewed. In their online variant, they bring into sharp relief some of the new digital forms of crime.

And, as the UIGEA tale makes clear, they also provide ample evidence of the difficulties of regulation for national state governments still mired with the cumbersome baggage of modernity in a fast paced, borderless world.

James Banks and David Moxon

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