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IS THE REGULATION OF INTERNET
GAMBLING A LOST BET?

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CONTENTS

I INTRODUCTION.....	5
II HISTORY OF GAMBLING.....	5
III CURRENT REGULATORY STRUCTURE.....	8
A FORMS OF GAMING	8
B POLICY GOALS OF GAMING REGULATION	11
C CURRENT REGULATION OF THESE GAMES.....	11
D KEY ISSUES IN THE CURRENT STRATEGIC FRAMEWORK.....	16
IV EFFECTS OF INTERNET GAMBLING	18
A INTERNET GAMBLING AND CURRENT LEGISLATION	18
B INTERNET GAMBLING AND THE OFF-LINE GAMBLING MARKET	18
C INTERNET GAMBLING AND CURRENT POLICY GOALS	23
V GOALS OF REGULATING INTERNET GAMBLING.....	28
A MORALITY	29
B THE RIGHTS OF THE INDIVIDUAL.....	31
C SOCIAL OBJECTIVES.....	31
D ECONOMIC OBJECTIVES	34
E CONSUMER PROTECTION.....	37
F CONCERNS ABOUT ASSOCIATED CRIMINALITY.....	38
VI THE 'SUBJECT' OF POTENTIAL REGULATION.....	40
VII WHAT WOULD HAPPEN IN THE ABSENCE OF REGULATION?	41

VIII METHODS OF REGULATION	43
A PROHIBITION.....	44
B LICENSING SYSTEM.....	49
C APPOINTMENT OF AN INDEPENDENT GAMBLING REGULATOR.....	57
D EXTENSION OF CURRENT LAWS.....	58
IX IS THE REGULATION OF INTERNET GAMBLING A LOST BET?	63

ABSTRACT

A significant change in our society is the shift from banning gambling to greater regulation. This paper focuses on the impact of Internet gambling on the gambling market. It examines the history of Internet gambling and how current policy goals and interventions change, if at all, in relation to Internet gambling. The author acknowledges that the issues faced by Internet gambling are not necessarily novel. Furthermore the author recognises that the Internet raises existent gambling issues in the guise of Internet gaming sites. The paper aims to demonstrate that a multifaceted approach is required to face the challenges posed by the Internet. While potential revenue and efficiency are relevant, political and social attitudes have been, and will continue to be important to the regulation of gambling, whether it be on or off-line.

WORD LENGTH

The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 16,000 words.

A. Early New Zealand Attitudes towards Gambling

There was a "long standing moral and opposition to gambling in New Zealand in the 1830s".¹ Religion was the basis of these anti-gambling views. However, while laws were passed against the "evil" of gambling, there was an inconsistency in the enforcement of these laws.² Therefore although a minority viewed gambling as immoral, the majority were still gambling. There appeared to be an acknowledgement that excessive gambling was wrong. However, horse racing,

¹ Anthony N Cabot "The Invention of Gambling: Report: The Emerging Conflict Between Technology, Policy and the Law" *Proceedings of Nevada Law Year*, 1997, 2.

² For the purposes of clarity, the terms gambling, gaming, betting and wagering will be used interchangeably in this essay.

³ David Grant *One Fall: A History of Gambling in New Zealand* (Victoria University Press, Wellington, 1994) 8.

⁴ *One Fall* above n 3, 11.

I INTRODUCTION

This is not fiction. Internet gambling is a reality. The problem is that governments do not know what to do about it. ... Every government has policies regarding gambling by its citizens. Some prohibit it, while others heavily regulate it. In contrast Internet gambling is anarchy within our midst; It's [sic] an arena where no rules apply and no public policies are applicable.¹

In New Zealand, as in many other countries, gambling² is an activity that is not left to voluntary market transactions. The rapid rise of Internet, or on-line, gambling has increased the opportunity and accessibility of gambling. This essay will discuss the effects of Internet gambling on current gaming policy; what regulation of Internet gambling would seek to achieve; the possible methods of regulation to achieve these goals; and whether the regulation of Internet gambling is a "lost bet".

However, it is first necessary to examine past governmental policy; and the economic, social and political concerns and motivations of off-line gambling regulation.

II HISTORY OF GAMBLING

A Early New Zealand Attitudes towards Gambling

There was a "long-standing moral and opposition to gambling in New Zealand in the 1880s."³ Religion was the basis of these anti-gambling views. However, while laws were passed against the "evils" of gambling, there was an inconsistency in the enforcement of those laws.⁴ Therefore although a minority viewed gambling as immoral, the majority were still gambling. There appeared to be an acknowledgement that excessive gambling was wrong. However horseracing,

¹ Anthony N Cabot "The Internet Gambling Report: The Emerging Conflict Between Technology, Policy and the Law" (University of Nevada, Las Vegas, 1997), 2.

² For the purposes of clarity, the terms gambling, gaming, betting and wagering will be used interchangeably in this essay.

³ David Grant *On a Roll: A History of Gambling and Lotteries in New Zealand* (Victoria University Press, Wellington, 1994) 8.

⁴ *On a Roll* above n 3, 51.

sweepstakes, and raffles were not considered to be in that class, as demonstrated by contradictory enforcement practices. In fact some considered such games, if “played” moderately, to be honourable.⁵

B Early legislation

In 1840, the applicable legislation was:⁶

- The 1664 Act of Charles II: Games are “innocent and moderate recreations” but should not be used “to maintain or encourage idleness, loose or disorderly behaviour or dishonest and lewd ways of life.”
- The 1710 Act of Anne: Addressed the same policy objectives as above in a more specific manner.
- The Gaming Act 1835 of William: Made the consideration of the gaming contract illegal to repress gaming.

The first national piece of New Zealand legislation was the Gaming and Lotteries Act 1881 which followed the Gaming Act 1845 (UK). It concerned gaming houses, betting houses and lotteries. It did not repeal the above pieces of legislation unlike the United Kingdom Act did. The Act declared all gaming and wagering contracts void and unenforceable. There continued to be inconsistent enforcement of this legislation.

The 1881 Act was replaced by the Gaming Act 1908, which was replaced in turn by the current Gaming and Lotteries Act 1977. There was a confusing mixture of prohibition and prohibition forming the basis of New Zealand legislation. The situation is encapsulated by the attitude that: “Although there are some who consider that all gambling is morally wrong ... most of us love a little flutter...”⁷ The trend towards regulation from prohibition was motivated by government-

⁵ Sidney Wellick *Enforceability of Gaming and Wagering Contracts* (Victoria University of Wellington, Wellington, 1998) 8-10 [*Enforceability of Gaming and Wagering Contracts*].

⁶ *Enforceability of Gaming and Wagering Contracts* above n 5, 5-7, 11-13.

⁷ Honourable D A Highet, Minister of Internal Affairs (24 November 1977) 416 NZPD 4785.

retention of lottery profits, as opposed to banning gambling.⁸ This attitude is the precursor to the current regulatory scheme, which is discussed below.

C Modern Gaming Trends

Over the past 10 years New Zealand's gaming industry (including race and sports betting) has experienced rapid growth. Comparisons with overseas suggest demand for gaming will continue to grow. Gaming expenditure is shown below.

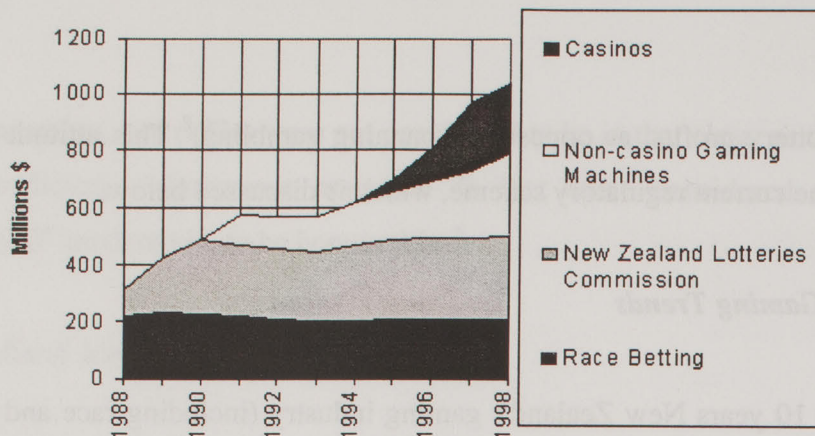
See Appendix A for gaming expenditure statistics 1979-1999. See the graph below for the types of gaming expenditure over the last 12 years. The trends until 1998 reflect past and continuing gaming practices. In 1998:

- Turnover (the gross amount bet) was approximately \$6 billion.
- Expenditure (that is, the gross amount bet minus the amount paid out as prizes) exceeded \$1 billion.⁹
- Gaming provided between \$200 and \$300 million to community purposes, \$70 million to racing clubs, and \$140 million in sector-specific taxation.
- Industry-funded counselling assisted nearly 2,000 problem gamblers and their families. Around 1,500 people sought help for the first time.

⁸ John O'Sullivan and Paul Christoffel "The Development of Gaming Policy in New Zealand" in Claudia Scott (Ed) *Lotteries, Gaming and Public Policy* (Victoria University Press, Wellington, 1992) 62.

⁹ In comparison, New Zealanders parted with \$850 million in gaming losses in 1996, an average of \$235 for every person. "Kiwis line up for gambling on the Net" *The National Business Review* 13 June 1997, 22.

Gaming Expenditure



III CURRENT REGULATORY STRUCTURE

A Forms of Gaming

The main forms of gaming currently available are:

Casinos

There are operating casinos in Christchurch, Auckland, Queenstown and Dunedin. A second Queenstown casino is likely to commence operation later this year. The Hamilton casino licence operation is currently subject to court action. It is currently illegal to host Internet casinos in New Zealand. Although, New Zealanders can access on-line sites hosted offshore.

Gaming machines

There are approximately 15,500 gaming machines operating on 2,200 sites. Some gaming machine societies raise money for specific authorised purposes. Others distribute funds to community groups to support particular community projects. Gaming machines must be approved by the Department of Internal Affairs. A society's gaming machine licence is renewed annually. In general, societies are expected to return at least 33per cent of turnover (minus prizes) to authorised purposes. A gaming machine site is expected to have a liquor licence and to prevent minors from playing machines. The society must have a detailed agreement with the site operator and demonstrate

good management of its sites. The site must display a gaming machine Site Approval certificate.

Housie

Detailed regulations govern the conduct of housie. There are two types of housie licence. In the first one, up to 1000 cards may be sold per session and 70 per cent must be paid out in prizes from the gross takings of each session. In the second type, up to 200 cards may be sold per session and 85 per cent must be paid out in prizes from the gross takings per session. The profits that housie sessions make must be returned to the society's authorised purposes.

Lotteries and Raffles

A lottery, or raffle, is a game that is determined by a draw. Draws for licensed lotteries must be carried out under police supervision. A society must obtain a licence if it is running a lottery with prizes totalling more than \$500. Applicants need to supply a draft of the lottery ticket with their application. If the prizes total \$500 or less, the society does not require a licence but must comply with the Gaming and Lotteries Act 1977. Lottery prizes cannot jackpot.

Gaming Sessions (Casino Evenings)

These are evenings when casino games such as roulette and blackjack are played using "funny money". Equipment for the evening is usually hired. The evening ends with a blind auction where prizes are purchased with fun money winnings.

Prize Competitions

The result of a Prize Competition is determined by a combination of chance and player knowledge or skill. An example might be a fishing competition requiring the contestants to catch "lucky" numbered fish. A society must obtain a licence if it is running a prize competition with prizes totalling more than \$500. If the prizes

total \$500 or less, the society does not require a licence but must comply with the Gaming and Lotteries Act 1977.

Calcuttas

Calcuttas are a type of prize competition consisting of a sweepstake on a live event such as a race or other sporting contest (for example the Melbourne Cup) combined with an auction. There are detailed rules and conditions governing the running of Calcuttas.

Parlour Derbies/Filly Stakes

These events involve totalisator-style betting on mock or pre-recorded horse racing events.

Instant Games

Usually an instant game takes the form of a scratch ticket or mystery envelope. Games must be licensed when the total prize value is over \$50. The Department of Internal Affairs must make sure that prizes will be distributed randomly.

New Zealand Lotteries Commission

600 retail outlets provide Lotto, Lotto Strike, Daily Keno, Instant Kiwi, and TeleBingo.

Race Betting and Sports Betting

Around 150 racing clubs offer race betting. 145 TAB agencies, 435 sub agencies, and five telephone betting centres (catering for 100,000 account holders) offer both race betting and sports betting. TAB Internet betting, a relatively new service, turns over up to \$400,000 per week.

B Policy Goals of Gaming Regulation

The intention of the Gaming and Lotteries Act, to which most gaming activities apply, is that gaming should be operated honestly, fairly and for the benefit of New Zealand communities.

There is no single clear gaming policy. Successive governments have intervened in response to social changes, new types of gaming, industry pressure and concerns about the negative effects of gaming. The interventions include:¹⁰

- Government ownership of a major gaming operator;
- Requiring gaming to contribute to specific social and economic outcomes;
- Ensuring the industry contributes to the costs of problem gambling;
- Imposing gaming-specific taxation and industry levies;
- Permitting the imposition of conditions and game rules to protect consumers; and
- Restricting gaming access to minimise harm to young persons.

The Department of Internal Affairs has enacted policy on the basis that gaming impacts on central government outcomes and policy strategies as follows:¹¹

- The size and the efficiency of the sector impacts on macro-economic performance;
- The tax collected, and the costs of regulation and problem gambling, affect fiscal performance;
- Positive and negative impacts of gaming affect the well-being of society;
- New technology, such as Internet gaming, is an integral part of e-commerce.

C Regulation of these games

In New Zealand, most gaming activities, apart from casinos and racing, are regulated by the Gaming and Lotteries Act 1977. In most cases, you need a licence to run a lottery, housie, gaming machines or other gaming activities covered by the

¹⁰ Department of Internal Affairs, *Gaming Policy* see <<http://www.dia.govt.nz/index.shtml>>

Act. Only a society can be licensed to conduct a gaming activity. A society is a body established and run entirely for non-commercial purposes. This means that individuals and commercial businesses cannot be licensed to conduct gaming activities.¹²

The Gaming and Lotteries Act says that societies must use gaming activities to raise funds for "authorised purposes". Authorised purposes are charitable, philanthropic, cultural and political purposes, and other purposes that are beneficial to the community or a section of it. This means that profits cannot be used for personal or commercial gain.¹³

Gaming activities are subject to audit requirements that vary according to the type of game being conducted. Financial information relating to the conduct of gaming activities must be supplied to Inspectors of Gaming on request. Inspectors of Gaming are also entitled to enter premises where gaming activities take place in order to obtain information relating to the gaming operation and ensure compliance with the Gaming and Lotteries Act.

1 Prohibited prizes

It is illegal to offer some items as prizes for gaming activities. Prohibited prizes are:

- firearms and ammunition
- liquor
- second hand goods
- land not zoned residential (e.g. commercial/industrial land)
- vouchers or entitlements for the above

¹¹ *Gaming Policy* above n 10.

¹² Examples of types of organisations that may be societies are Boards of Trustees or PTAs; charitable trusts; chartered clubs; church groups; amateur sports clubs affiliated to a recognised organisation.

¹³ Some examples of authorised purposes are refurbishment of a local marae; computers for a school; a sports trip for a recognised amateur sports team. These things benefit the wider community. Some examples of things that are not authorised purposes are funds for a family reunion; an overseas trip for yourself; the cost of "after match" functions for sporting groups; funds to support your business.

2 Legislation

In the absence of an explicit government policy framework for gaming, the regulatory framework is essentially set by the following pieces of legislation:

<i>Act</i>	<i>Key Features</i>	<i>Relevant Organisations</i>	<i>Key Ministerial Responsibilities</i>
Gaming and Lotteries Act 1977	<p>Governs the conduct and operations of lotteries, games of chance (including housie), instant games, prize competitions and non-casino gambling machines.</p> <p>A key objective is that gaming raise funds for community purposes. Gaming may not be run for commercial gain.</p> <p>Non-casino gaming machines are licensed under the Act's game of chance provisions.</p> <p>Prohibits bookmaking.</p>	<p>Establishes the Lotteries Commission, which conducts Lotto, Lotto Strike, Instant Kiwi, Daily Keno and TeleBingo; the Lotteries Grants Board to distribute funds raised by the Lotteries Commission.</p> <p>The Department of Internal Affairs issues licences to approved societies, and audit their operations, including venue inspections.</p>	<p>Grants licences to conduct gaming activities (delegated to the Department of Internal Affairs).</p> <p>Approves major changes in limits for prizes, stakes and entrance fees for certain games.</p> <p>Approves overseas gaming activities in New Zealand.</p> <p>Appoints members to the Lotteries Commission.</p> <p>Chairs the Lottery Grants Board and recommends to the Governor-General appointments to the three non-statutory positions.</p> <p>Establishes distribution committees and appoints</p>

			members.
Casino Control Act 1990	Provides for the establishment and operation of commercial casinos to promote tourism, employment and economic development.	Establishes the Casino Control Authority to licence and regulate casinos. The Department inspects and supervises casino operations and issue certificates of approval for casino employees.	Recommends appointments to the Casino Control Authority to the Governor-General.
Casino Control (Moratorium) Amendment Act 1997	Provides for a three-year moratorium on the consideration of applications of licences for new casino premises between 16 October 1997 and 15 October 2000.		None
Racing Act 1971	Provides the framework for the regulation and governance of the racing industry. Permits race and sports betting. Totalisator Agency Board (TAB) profits are distributed among racing clubs.	Establishes the TAB which has a monopoly on sports betting and off-course race betting. Also establishes the Racing Industry Board (RIB) to regulate the industry and oversee TAB performance. Also establishes the racing judicial system.	The Minister of Internal Affairs has no responsibilities. The Minister for Racing makes appointments to the RIB and the TAB, and determines appeals against RIB changes to conference rules.
Gaming Duties Act 1971 The Goods and Services Tax Act 1985 and the	Provides for the payment of sector-specific duties by the TAB and racing clubs, the		All three Acts are the responsibility of the Minister of Revenue.

Income Tax Act 1994 are also relevant.	Lotteries Commission, gaming machine societies and casinos.		
Financial Transactions Reporting Act 1996	Minimises money laundering by imposing reporting obligations on financial institutions.	Licensed casino operators and the TAB are defined as "financial institutions" for the purposes of the Act.	Responsibility of the Minister of Justice.
Gaming Law Reform Bill (currently before Parliament)	The Bill seeks to: improve casino licensing processes; formalise the legal foundation for gaming machine licensing and regulation; and address some of the social impacts of casinos and non-casino gaming machines. Electronic monitoring of gaming machines is a key issue.	The Bill will affect the Department of Internal Affairs' Gaming and Censorship Regulation Group's licensing and compliance roles, service delivery procedures and resource requirements.	

3 *The common law*

The law's approach to gambling debts is one where there appears to be no significant social reason in enforcing gambling debts, or to justify the commitment of the State's resources to doing so.¹⁴ There are legislative obstacles to enforce wagering and gaming contracts.¹⁵

¹⁴ David Goddard "Security of Contract: Why it matters and What That Means" (2000) 6 NZBLQ 82, 83.

¹⁵ *Enforceability of Gaming and Wagering Contracts* above n 5.

D Key Issues in the Current Strategic Framework

1 Growth in problem gambling

Problem gambling is a significant social issue. The majority of people requesting treatment cite gaming machines as their main mode of gambling. On a per capita basis, problems appear to be most prevalent among Maori and Pacific Islanders.

New Zealanders parted with \$850 million in gambling losses in 1996, an average of \$235 for every person.¹⁶ It was estimated in 1998 that New Zealand has 60,000 pathological gamblers – one of the highest rates in the world.¹⁷ New Zealanders bet \$5 billion or \$1500 for every man, woman and child a year in 1998. In comparison, New South Wales' clubs and pubs own 10 per cent of the world's poker machines. On a per capita basis, Australians are the world's biggest gamblers, with people in New South Wales spending on average NZ\$1,015 a year per person on poker machines. Consequently, losses at poker machines alone are now exceeding national savings.¹⁸

However there are a variety of other secondary harms to society of problem gambling: theft, fraud, and embezzlement; domestic violence; repossession; the loss of life savings; suicide; children of gamblers missing out on basic necessities such as food, shelter and clothing. As American Professor Robert Goodman says: "Enormous public and private costs are incurred to deal with a growing sector of the population afflicted with serious gambling problems."¹⁹

2 Revenue

Currently, official gaming in New Zealand yields about \$122 million in duties for the government. In addition to this are goods and services and income tax from the racing industry, Lotto and Instant Kiwi, gaming machines and casinos. Similarly,

¹⁶ "Kiwis line up for gambling on the Net" above n 9.

¹⁷ "Where wild gambling fantasies lead" *The Evening Post*, 19 June 1997, 8.

¹⁸ "Aussie love of the punt under the microscope" *Waikato Times*, 30 October 1998, 6.

¹⁹ "Where wild gambling fantasies lead" above n 17.

Australia relies on gaming too for revenue – one in every eight tax dollars.²⁰ However Australia has a greater reliance, as Australia is host - or hostage (depending on how you view it) – to 20 per cent of the world's gaming machines. This is remarkable given Australia's population.

3 Mixed objectives, inconsistent gaming industry framework and regulatory environment

The desired outcomes from gaming policy are unclear. Existing legislation has a mix of social and economic objectives. However, it is questionable whether these objectives are appropriate, or best achieved by current policies.

The level of gaming regulation does not always correspond to the risks posed by various forms of gaming. For example, the regulatory regime applicable to housie is much more stringent than the current gaming machine regime. Yet, gaming machine players spend about twenty times the amount spent on housie.

In addition, the lack of neutrality within gaming regulatory regimes, between forms of gaming, and between gaming and other industries, may distort investment decisions. For example, the emphasis in the Racing Act on "facilities and amenities" and levies paid to an "Amenities Account" may have contributed to over-investment in racecourse facilities.

Furthermore, there is no consistent framework for the gaming industry. This leads to perceptions of unfairness. For example, some racing groups consider it unfair that casinos pay duty at the rate of 4per cent expenditure, while racing groups pay 20per cent. Another example of inconsistency is that although on-line sports betting is allowed, it is illegal to host Internet casino sites from New Zealand.

²⁰ "Aussie love of the punt under the microscope" above n 18.

4 *Inflexible gaming legislation and cross-border electronic gaming*

Gaming legislation is not sufficiently flexible to regulate some new forms of gaming resulting from technological changes or other product developments. For example, a gaming machine (which offers totalisator betting) is caught by both the Gaming and Lotteries Act and the Racing Act, which regulate gaming in fundamentally different ways.

Enhanced opportunities to participate in cross-border electronic gambling are likely to result in increasing competition with New Zealand gaming products. This may preclude some policy outcomes and certainly limits the effectiveness of some regulatory options.

IV EFFECTS OF INTERNET GAMBLING

New Zealanders who spend \$7 billion on gambling turnover each year are unlikely to spurn the ability to cast their dice further around the world.²¹ All people need is a computer, Internet connection and a credit card. There are hundreds of sites on the World Wide Web offering inter-active casino-type games to play and sports bets to make.

A *The Effect of Internet Gambling on Current Legislation*

There is nothing very helpful in place to manage cross-border electronic/Internet gambling. There is no special legislation for Internet gaming. There are various acts that cover the operation of gaming activities in New Zealand. Some of these apply to Internet based games and others do not.

1 Gaming activities cannot be run on the Internet under the following legislation

- (a) The Casino Control Act 1990

²¹ "Incoming Tides" *The Southland Times*, 11 January 2000, 8.

The Casino Control Act provides for the licensing and operation of casinos in New Zealand. It relates only to land based premises which people physically enter to play casino games and gaming machines. It does not permit the licensing of 'cybercasinos'.

(b) The Racing Act 1971

The Racing Act allows for the TAB only to take bets through the Internet. Bookmaking by anyone, in New Zealand, other than the TAB, by any means including the Internet, is illegal.

(c) The Gaming and Lotteries Act 1977

While you cannot run a cybercasino or take bets over the Internet in New Zealand, you can operate other gaming activities if you meet the requirements of the Gaming and Lotteries Act. The Act applies to gaming activities when:

- participants pay to play (directly or indirectly);
- winners are determined by chance (or a mixture of player knowledge or skill and chance); and
- there are prizes of money or moneys worth.

If all these characteristics are present in a game, it will need a licence to operate lawfully in New Zealand, whether it is conducted over the Internet or not.

2 *Running licensed gaming activities on a web site*

This is particularly relevant to those who wish to run a gaming activity on a web site on behalf of a society that is licensed to raise money for authorised purposes (those purposes were discussed earlier).²² The only people who can be paid to run gaming activities for a society are licensed promoters' and the society's 'authorised employees'. A licensed promoter is someone who has successfully applied to the

²² Licences can be issued to 'societies' only. A society is an entirely non-commercial group of people. The purpose of the gaming activity must be to raise money for authorised purposes, which are charitable in nature and of benefit to the community. Licences cannot be issued to

District Court for a licensed promoter's license. An authorised employee is someone who works for the society and spends most of their time on non-gaming related duties. Generally you cannot be paid to run a licensed gaming activity on a web site.

3 *Sales promotion schemes*

Sales promotion schemes are lotteries, instant games or prize competitions that are run to promote the sale of goods and services. If you sell goods or services through the Internet, you can use one of these games to encourage sales. The promotion must be for a limited time and comply with the requirements for sales promotion schemes set out in the Gaming and Lotteries Act.

4 *Other miscellaneous information in relation to the current regulatory scheme and Internet gambling*

Payment to an Internet Service Provider ("ISP") does not amount to indirect payment to enter a gaming activity on your web site if the charges cover full access to Internet services and are of a standard nature.

It is an offence to advertise any game, whether it is an overseas site in New Zealand or not, unless it is licensed or approved under the Gaming and Lotteries Act.

New Zealanders are free to enter Internet gaming activities in NZ that are based overseas. However you play at your own risk. "There are no consumer protections for participants in Internet gaming who are running games offshore without Ministerial approval."²³ This approval has not, to best of the author's knowledge, been exercised yet.

individuals or business groups for personal or commercial gain. This is problematic for many Internet gaming providers as they are mainly run for commercial purposes.

²³ The Department of Internal Affairs, *Gaming on the Internet*, (Wellington, 2000).

Numerous projects, pilot studies and reports indicate that use of the electronic highway for Internet gaming will really take off.²⁴ Many new actors are now entering the games of chance market, and are attempting to capture a piece of the existing market with a simple game. And even if the use grows less rapidly, which it so far has not, it would still be desirable to consider the implications of Internet gaming in advance of theoretical issues taking practical significance.

B Internet gaming: A Complement or Substitute to the Off-line Gaming Market?

Although Internet gambling will probably grow,²⁵ the question that really arises is whether Internet gambling will divert gaming from (a) off-line gaming activities and (b) from overseas on-line sites. Unfortunately there is no data with findings on these questions. The data that exists, as will be discovered below, is conflicting. There is evidence that Internet gambling will take off; while others claim gamblers are wary of Internet gambling sites.²⁶ There are those that say that Internet gambling will create gamblers and thus create a new extension of the gambling market. There is a great deal of separate analysis on the profiles of traditional gamblers.²⁷ This is relevant to targeting off-line-problem gamblers. But this is not helpful when trying to predict the profile of potential problem on-line gamblers because of the wide variety of people who have access to computers in and outside of their homes.

²⁴ Nederlands Kansspel Platform (NKP: Stichting Exploitatie Nederlandse Staatsloterij SENS, De Lotto, Holland Casino and the Stichting Nationale Postcode Loterij NPL) and (the Netherlands) Gaming Control Board, *Interactive gaming in the Netherlands: Management summary*, Netherlands, 1998, 3 [*Interactive gaming in the Netherlands*].

²⁵ For example, according to Datamonitor, 200 million people in Western Europe and the United States will be playing Internet games (that is gambling games) on their mobile phones by 2005. <<http://www.casinowire.com/archive/200009/1952.shtml>> See also Norman Au and J S P Hobson "Gambling on the Internet: A threat to tourism?" (1997) 35(4) *Journal of Travel Research* 77.

²⁶ For example, David H Freedman "Living room roulette" (1998) *Forbes* 35.

²⁷ And even then there is still a wide profile of people who gamble in traditional off-line forms of gambling. See the Department of Internal Affairs web site for links to various studies of off-line gaming: <<http://www.dia.govt.nz/>>

The Internet does obviously affect, at least theoretically, the position of existing organisations operating games of chance²⁸ – the question is to what extent? There is an unfortunate dearth of material on this question. The author suspects that Internet gaming does not necessarily diminish, but is a complement to the off-line market for gambling. Furthermore the author speculates that New Zealanders would not necessarily choose, nor avoid, gambling on New Zealand sites, as they would pick the ones with the highest chance of returns. As for problem gamblers, the issue is gambling, not on whose site, although most would pick the highest chances of return. Thus it would be a question of disclosure of odds. And as gambling is a game of chance, the odds are important, not who is offering them.

Arguably if gamblers are, by the nature of their activity, willing to chance their money, they may well be happy to chance their money on sites from countries notorious for rumoured shady dealings. Besides, just because some places are rumoured 'tax-havens', it does not necessarily mean that the games operated from their Internet sites are rigged unfairly against the gambler. Likewise, it is also theoretically plausible that New Zealanders would prefer to gamble on New Zealand-based sites. It is a matter of personal choice and difficult to predict.

However it is certain that Internet gambling is an existent market with sufficient demand regardless of where it is based.²⁹ This probably reflects the nature of the Internet, where the physical administration of the site is theoretically irrelevant to the actual transaction that occurs on the Internet. Estimates of the number of gaming sites vary from 250 to 1,000 (and sometimes far greater), ranging from on-line casinos to sports betting sites to lotteries, tournaments, bingo games and sweepstakes.³⁰

²⁸ John Moore "Wired In Washington" (1998) 30(132) *National Journal* 1876.

²⁹ Although the number of truly distinct gaming sites may be smaller than Websense's tally of 21,000, the staff at Christiansen Capital Advisers say that it is difficult to keep tabs on the Internet gambling industry. <<http://www.casinowire.com/archive/200009/1958.shtml>>

³⁰ Tom W Bell, "Why on-line betting can't be stopped - and why Washington shouldn't bother trying" <<http://www.reason.com/9910/fe.tb.gamblers.html>>

C *The Effect of Internet Gambling on Current Policy Goals*

The Lotteries Commission describes the growth of Internet gambling as "truly startling". Internet gambling sites numbered 190 in May 1998. One year later they had more than doubled to 473. Gambling revenues doubled between 1997 and 1998 to value US\$651 million (NZ\$1.25 billion).³¹ Thus there has been an increase in the use and proliferation of Internet gaming sites, which is a lucrative market.

However, as well as an increase in growth of revenue, there are some concerns associated with Internet gambling.³² It is hard to know in which country a site is based. There are no regulated controls over who is running the on-line site. There is no foolproof way to keep underage people from playing. There is no way of knowing for certain if the casino will pay out a win or if the software which enables you to play the games has been rigged. There are no rules to exclude known addictive gamblers. Problem gambling is intensified, as it is easier to lose track of how much money is being spent on-line. These issues are discussed further below.

1 *Problem gambling*

Problem gambling is an aspect of gaming that causes great concern and is a current policy concern. As noted earlier, one of the policy goals in regulating gaming is to minimise the negative impacts of gaming to enhance the general well being of society.

Problem gambling associations say that New Zealand is particularly exposed to compulsive Internet betting with its high number of personal computers per capita.³³

³¹ "Lotteries to examine e-commerce Uses" *New Zealand Infotech Weekly*, 6 September 1999, 8.

³² See also Peter Neumann "Internet Gambling" (1998) 41(2) *Communications of the Association for Computing Machinery* 112.

³³ "Internet gambling fears" *Sunday Star Times*, 7 June 1998, 1.

Major David Bringans, the Salvation Army's national spokesman says that Internet gambling will do nothing to curb the growing problem of gambling addiction in New Zealand. He says that the Christchurch Casino's Internet gambling proposal to legalise cyber-casinos has the potential to draw in more people, even those who, by age, would be refused entry to casinos. The Major said that their services have to continually expand for those with problems caused by gambling.³⁴

The Compulsive Gambling Society said that the TAB Internet betting system, which started in 1998, made it easier for New Zealand gamblers to get into debt. Gamblers could transfer their funds to their TAB account via credit card, as part of Internet betting. The Society's psychologist, Sean Sullivan said that this would make gambling more accessible, and was likely to encourage gamblers to get into further debt. Sullivan said that there's a very real correlation between accessibility to gambling and the size of the problem. Sullivan said that clicking on a mouse to transfer money was too easy and not the same as handing over cash. Most problem gamblers went into a "trance-like state" and needed "time out" to give them a chance to realise that they had gone too far, he said. Normally, this would be when they had run out of money, but being able to transfer money from a credit card would not give them this "time out". Sullivan said that it was common for problem gamblers to try and gamble their way out of debt and did not see paying it off as a viable solution.³⁵

These concerns are reflected in Australia where on-line gambling is 'regulated'.³⁶ It is estimated that at least one in 100 Australian adult has become obsessed with gambling. Dr Robyn Napier, the director of the Australian Medical Association of general practice in New South Wales, says levels of problem gambling are on the increase since the introduction of phone and Internet betting. Problems among the world's keenest gamblers have increased so rapidly that the medical association is now urging doctors to examine gambling as a possible underlying reason for many

³⁴ *The Press*, 14 July 1998, 2.

³⁵ "Internet TAB bad for betting addicts: society" *Waikato Times*, 8 June 1998, 2.

³⁶ Northern Territory, Queensland and Australian Capital Territory have legalised on-line casinos. Melbourne's Crown Casino is reported to be doing preliminary work on developing a site. "Counsellor: Bosses should be aware of virtual casino danger" *New Zealand Infotech Weekly*, 28 July 1999, 7.

common medical complaints, such as high blood pressure, peptic ulcers, headaches, depression and anxiety.³⁷

Internet gaming would arguably increase problem gaming because of its convenience, the very frequent possibility of winning and the lack of time limits. These factors are why gaming machines are now responsible for 70 per cent of gambling problems. Gaming machines offer convenience gambling in every town. Rapid reinforcement from the possibility of winning every few seconds and no time limits were creating 70 per cent of addiction.³⁸ Internet gambling would probably have a similar effect. And the fact that Internet gambling sites take credit card payments does not help as discussed earlier.

However, it should be remembered that gaming problems are already an existent social concern. The Internet is relevant in that it becomes another form of gambling in which problems associated with gambling will continue to surface. Furthermore, the Internet is only one outlet for addiction. Nonetheless, the nature of the Internet makes it a significant outlet for addiction. On-line casinos raise concerns from being a 24-hour service and easily accessible in homes and offices.

However, there is little, if any, information on addiction of Internet gambling as of yet. A Wellington-based phone counsellor guesses that it may be another two years before the extent of problems people are having today with Internet gambling become truly visible, because of the time lapse involved in people seeking help.³⁹ Furthermore, another reason that Internet gambling addicts are not easily detectable is that unlike in clubs and casinos, there is often no one to step in with a "friendly word" and bring a problem to the gambler's attention.⁴⁰

Note that many clients of New Zealand gambling sites would be overseas gamblers, therefore if there is a serious rise of problem gamblers overseas, it is not of regulatory significance in New Zealand because we are unlikely to commit State resources to gambling addictions in other countries. However, there is still

³⁷ "Aussies love of the punt under the microscope" above n 18.

³⁸ "Sky City nets stake in on-line gambling firm" *The Press*, 21 July 2000, 11.

³⁹ "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

potential for a domestic problem. The Compulsive Gambling Society say that highly literate New Zealanders would be keen to try something new, particularly the young, who were most at risk from gambling problems.⁴¹ A current policy goal is to ensure the industry contributes to the cost of problem gambling. Therefore under current policy goals, on-line gaming sites should also contribute to the cost of problem gaming of New Zealanders, as there is a direct correlation between accessibility and problem gambling.⁴²

2 *Protection of youth*

Given the ease of access to family computers, and the difficulty of gaming sites to determine the age of gamblers, the restriction of youth from gambling is a policy goal that is intensified with the advent of Internet gambling. Young Internet users are especially vulnerable because they did not have the experience to recognise wins were often the result of chance, not skill.⁴³

3 *The gaming industry's contribution to social outcomes*

Current government policy requires gaming to contribute to specific social outcomes. Thus there are two ways in which Internet gambling is relevant. Firstly, Internet gambling is relevant to the purpose of organising gambling by some organisations. Many organisations use gambling to raise funds. Casinos are run for commercial profit whereas most other forms of gaming are not. While consistency in this area is under discussion, Internet gaming is also relevant to this debate.

Secondly, domestic access to gambling sites based overseas affects current gaming policy of contribution to society. For example, there is the potential for, Australia's multi-million dollar lottery companies, to offer a scale of prizes that their New Zealand counterparts could not match. That would likely mean less income, and less money to distribute for the Lottery Grants Board, which last year passed \$132

⁴⁰ "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

⁴¹ "Internet casino proposal sparks mixed response" *The Dominion*, 18 June 1997, 6.

⁴² Compulsive Gambling Society psychologist Sean Sullivan quoted in "Internet gambling fears" above n 33.

⁴³ "Internet gambling fears" above n 33.

million back to community organisations.⁴⁴ This is an important and relevant effect in the context of New Zealand's predominantly community-based system of gaming. On the other hand, Internet sales of, for example, lottery products may turn out to be no more than another distribution channel for existing players – and not a pathway to a wealthy new market of Internet surfers. This really depends whether New Zealand gambling would be diverted to overseas-based gambling sites in the absence of New Zealand-based sites. However there is insufficient data on this issue.

4 *Consumer protection*

Another associated impact on the current policy goal of consumer protection is that there is no way of knowing for certain if the casino will pay out a win or if the software which enables you to play the games has been rigged. New Zealand currently pursues consumer protection through the relevant gaming legislation, as set out in the table above. As some of the legislation does not cover Internet gambling, new measures to encompass the technological challenges of the Internet must be considered.

5 *"Economic" policy goals*

As noted earlier, the gaming sector impacts on New Zealand's macro-economic performance, albeit slightly. There is also a related, but somewhat tenuous, argument by the CCA that Internet casinos will attract tourists to New Zealand.⁴⁵ We market New Zealand for its natural beauty and outdoor adventure, not its casinos. Casinos boost tourism only when there is a large, casino-less population nearby. There is not one. Only 10 percent of gamblers at the Auckland casino have turned out to be tourists. But most significantly, if you can bet on Internet casinos why would you want to come to New Zealand, or go anywhere else?

More significantly, some of the costs of regulation and some of the social costs of gaming affect the fiscal performance of central government. A current policy goal

⁴⁴ "Incoming Tides" above n 21.

is to ensure that gaming contribute to specific economic objectives, in addition to the social goals outlines above. The government does this by imposing specific taxation and industry levies. In addition to contributing to social and economic goals, Internet gambling, as another facet of the gaming sector, can provide general revenue-earning taxes to the government.

There is evidence that Internet gambling can bring greater revenue.⁴⁶ A study done by Sebastian Sinclair, a research consultant for Christiansen/Cummings Associates Inc, estimates that Internet gambling more than doubled from 1997 to 1998, the number of gamblers increasing from 6.9 million to 14.5 million and revenues from US\$300 million to US\$651 million. He also projected that, by 2001, Internet gambling revenues will reach US\$2.3 billion.⁴⁷

Furthermore, a current policy intervention is government ownership of a major gaming operator. The Government may want to have its own gambling sites too and contribute to the "economic" objectives outlined above. It may be questionable whether the government necessarily needs to own a major gaming site in order to benefit from some of the financial windfalls discussed above.

Whichever way we regard gambling – as entertainment, skill or vice – as far as the Internet is concerned, it is merely a transaction.⁴⁸ The fact has to be faced that Internet gaming, especially on-line casinos, is inevitable regardless of one's opinions of gambling. But what would, and should, governments seek to achieve in regulating this voluntary market exchange?

V GOALS OF REGULATING INTERNET GAMBLING

Authorities will have to examine the most appropriate ways of keeping the activities as above-board and fairly handled as possible. Internal Affairs

⁴⁵ "Where wild gambling fantasies lead" above n 17..

⁴⁶ However there is also contrary evidence. According to Nielson//NetRatings, gambling sites on the Internet are not nearly as popular as no-stakes gaming and free sweepstake sites. <http://www.casinowire.com/archive/200009/1948.shtml>

⁴⁷ "Acting against on-line gambling" *The New Straits Times* 31 January 2000, 15.

⁴⁸ "Incoming Tides" above n 21.

Department Chief Executive Roger Blakely says the department does not have a position "one way or the other" on whether virtual casinos should be legalised in New Zealand, but says the issue is on its "radar screen".⁴⁹ It is therefore necessary to determine, given the impact on current policy goals, what the policy goals would be in regulating Internet gambling. New Zealanders must think technically, ethically and politically when considering what to do, if anything at all.⁵⁰

A *Morality*

Morality is an issue relevant to Internet gambling, even though off-line gambling is legalised to an extent (that is, subject to the current regulatory scheme). New Zealanders do have contradictory views towards gambling in general. Many view gambling as a vice but are happy to buy a school raffle ticket or a Lotto ticket for a good cause. Many organisations also use gambling to raise funds.

Gamblers see gambling as a way – perhaps the only way – to a better life. Psychologists call this the pathology of hope. However the reality is that hard work and productive enterprise – as an individual, a community and a country – in addition to "luck", are necessary. Gambling eats up disposable income and cannot be used for other goods and services. Some view gambling as eroding the values of hard work, sacrifice and personal responsibility.⁵¹ For this reason some view Internet gambling, like any other form of gambling, as immoral and should not be encouraged.⁵²

As views differ as to what is moral and what is not, similarly, views also differ as to the extent of morality, or immorality, applicable to an activity. Regardless of one's classification of gambling as morally acceptable or not, it is clearly not, in this author's view, on par with matters like pornography, which is understandably prohibited on and off-line regardless of the difficulties of enforcement. Thus, as the history of gambling shows, although some find gambling immoral, it is immoral

⁴⁹ "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

⁵⁰ "Don't leave society in hands of technocrats" *The Press*, 26 August 1997, 15.

⁵¹ For example American Senator Kyl's bill, which tried to ban Internet gambling, will be discussed later in the paper.

⁵² "Where wild gambling fantasies lead" above n 17.

only to an extent that has significance for its regulation, but it was and is not totally banned. Gambling has been accepted in society, as long as it contributes to society and the problems it may result in. Internet gambling is exactly that, gambling, only on a more accessible scale. Most gambling is still done off-line. Furthermore, although there are morality issues with gambling and Internet gambling, there would be little point in banning Internet gambling as there is already a demand for it, and does not pose additional novel moral concerns to gaming in general.

Internet gaming does highlight issues and concerns. However these are, more or less, existent issues which are only more pronounced by the technological development of the Internet; they are not new issues. More significantly, it makes no sense to prohibit Internet gambling, for morality reasons, when the same thing can be done in a casino, regardless of the morality aspect. Far from revolutionising society, Internet gambling is merely an extension of current societal trends of increased gambling (as the figures discussed earlier illustrate).⁵³

Experts agree that Internet gambling exacerbates the problems of conventional gambling because it removes the barriers to addiction. Its ease of access and repetition, and its privacy and, hence, lack of social stigma, make electronic gambling "the crack cocaine of gambling".⁵⁴ However, there is also sometimes the crack cocaine of conservatism in trying to legislate morality.

A 1993 survey found that only 25 per cent of Americans surveyed who did not gamble cited moral or religious reasons.⁵⁵ However even religious groups may have a conflict of interest when it comes to opposing Internet gambling. Charitable games earned US\$2.5 billion in 1995, a 3.4 per cent of the legal American gambling market. Critics of gambling also face the gaming industry's self-promotion as a leisure or entertainment industry, not as predators with the sole purpose of making sure players lose their money.⁵⁶

⁵³ See James H Frey "Federal involvement in US gaming regulation" (1998) 556 *The Annals of the American Academy of Political and Social Science* 138.

⁵⁴ "Betting against the house" (1999) 352(8135) *The Economist (US)* 59.

⁵⁵ Kevin Heubusch, "Taking Chances on Casinos"

<http://www.marketingtools.com/Publications/AD/97_ad/9705_ad/AD970530.htm>

⁵⁶ "Federal involvement in US gaming regulation" above n 53.

B The rights of the individual

The counter-argument to morality concerns the freedom and satisfaction of preferences. The Internet is not necessarily an electronic sanctuary for illegal betting. The goals of regulation must take into account of consumer demand. It is debatable whether the increased accessibility increases demand for Internet gaming, or that the increasing sites are responding to market demand. Regardless of the "chicken and the egg" type argument, there is demand for this 'service' and regulatory goals must take account of that.

It is clear that New Zealanders have the right to peacefully dispose of their income as they please, whether by investing, burning or betting their money. There is a very real demand for Internet gaming. Thus regulators must be aware of the demand for such a service in order to satisfy individual preferences. Participants perceive to get a benefit from these consensual transactions; gamblers get utility, or satisfaction, from such an activity, and gambling organisations are paid for. This is a market where both demand and supply exist.

It is the uncompensated externalities in the transaction that must be considered. Therefore the specific goals of regulating Internet gambling should be examined given that Internet gambling is another form of gambling, and gambling is legalised, regardless of the morality arguments against it. Casino Control Authority (CCA) chief executive Trevor Garrett has said the issues facing Internet casino regulators and policy makers covered social, financial and regulatory areas.⁵⁷

C Social objectives

1 Underage and problem gambling

The United States National Gambling Impact Study Impact Study Commission ("the NGISC") was formed by the United States government about three years ago.

⁵⁷ "Kiwis line up for gambling on the Net" above n 9.

It was given the task to conduct a comprehensive legal and factual study of the social and economic implications of gambling in America. In June 1999 it published its final report. The NGISC reported that groups who are most susceptible to problems with Internet gambling include underage and pathological gamblers.

For underage gamblers, as the Internet can be used anonymously, they can easily access Internet gambling sites. Concern regarding underage gambling derives in part from this age group's familiarity with and frequent use of the Internet. And given their knowledge of computers and familiarity with the "Web", young users may find gambling on the Internet particularly appealing.

For pathological gamblers, the high-speed instant gratification of Internet games and the high level privacy they offer may exacerbate the problem and pathological gambling. The NGISC report states that access to the Internet is easy and inexpensive and can be conducted in the privacy of one's own home. Furthermore pathological gamblers can "surf" sites and gamble 24 hours a day.

In response to such arguments, the CCA point that institutions have already been set up to cater for compulsive gamblers. It suggests that there should be no control to stop these people, gambling, except for the available limits on their credit cards. Casino consultant Nigel Kent-Lemon has praised the way casinos have been set up in New Zealand. He said that, compared with other countries, New Zealand had a "pretty sophisticated" public gaming policy, with the machinery in place to help problem gamblers.⁵⁸

In comparison, representatives of problem-gambling groups argue that under-age and compulsive gambling is sufficiently serious to require more comprehensive regulation as gamblers have easier access to internet gambling in their homes and offices. In fact there is evidence that some New Zealanders are already addicted to betting through offshore virtual casinos.⁵⁹ Thus a reason for government intervention in this area stems from a market failure and consequent negative

⁵⁸ "Expert praises New Zealand casino policy" *The Press*, 1 July 1998, 5.

externalities borne by society of problem gamblers. Similarly, there is an externality by youth gambling. This is from debt incurred by parents on behalf of their children, unrecoverable debt by providers, and social problems (such as crime) of youth, especially as they are more likely to become problem gamblers.

2 *The focus of community-based gambling*

Another social issue is keeping some gambling proceeds in New Zealand. The Lotteries Commission warns that any wholesale expansion of Internet gambling could destroy New Zealand's mainly community-based system of gaming and gambling.⁶⁰ New generations of players seem to be increasingly drawn by a mix of excitement and fun, rather than by the good causes for which a particular game is provided.⁶¹ Where the raising of funds was an important starting point in traditional policy, it is now increasingly developing into a possible marketing instrument. Internet gambling is mainly run for commercial profit whereas most off-line gaming is not. Off-line gambling has been legalised on the condition that it should contribute to society. If Internet gambling is another form of gambling, then it too should contribute to social objectives.

Furthermore, there are competition policy implications from the fact that Internet game providers have virtually no obligation to hand over the money they have raised. They are able to pay out much higher prize money (with their own profit margin). That creates competition between Internet providers to have higher prize money. Thus those New Zealand organisations using Internet gaming for fundraising would not be able to compete, as their sites would not have as high prize money as the funds are used for community purposes. However Government intervention would not be a viable policy goal to correct the difficulty in using Internet gambling as a fundraiser because:

- For New Zealand fundraisers to compete against Internet gaming sites, intervention would have to limit the money available by gaming sites for prize money. However, this measure could only apply to New Zealand-based

⁵⁹ "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

⁶⁰ "Gambling on the Internet" *The Evening Post*, 30 August 1999, 3.

⁶¹ *Interactive gaming in the Netherlands: Management summary* above n 24.

gambling sites and therefore the measure would be ineffective as New Zealand fundraisers would still have to compete against overseas gaming sites who offered higher prize money. Furthermore, there would be a cost in ensuring enforcement of this measure locally, which as discussed in the methods of regulation below, is inefficient and ineffective.

- Another method of trying to reduce the difference between the amount of prize money is for Government to "top up" the prize pool. However this is inefficient as the government could just give money to the fundraising organisation in the first place independent of Internet gambling.⁶²

Thus it is not a viable policy goal to fund social objectives directly through Internet gambling. However that does not preclude the indirect contribution of Internet gambling to social objectives through gaming revenues and related taxes.

D Economic objectives

Christchurch Casino, who operate an internet gambling casino site for play money only, say that there is a "legislative vacuum" in New Zealand, as there is very little regulation of internet gambling. However there is an opportunity for New Zealand to obtain income and taxes if New Zealanders provided a reputable Internet gambling service.⁶³

We can attract foreign exchange from overseas punters. For example, TAB's on-line betting service is now attracting businesses from 62 countries with up to 50 per cent of its on-line turnover coming from offshore. Australians dominated the overseas bettors, but others were as far afield as Malaysia, Singapore, Denmark and even Antarctica. The TAB's site was launched on 14 June 1998 and since then monthly year-on-year revenue increases have been running between 1,000 and

⁶² However Internet gaming is not all bad news for fundraisers. Internet gaming is already operational in Liechtenstein. It operates "Inter-Lotto", with a guaranteed weekly Jackpot of \$1.3 million, and Coopers and Lybrand audit it. The International Red Cross has utilized it since 1997. Proceeds are split with one-half to winners and over one-quarter, respectively to the Red Cross and Liechtenstein charities. Yet this lottery is not operational in Austria, Finland and other countries. Joseph Kelly "Internet gaming: What are the odds for on-line betting suites and casinos reaching their full potential?" (1998) 148(6833) *New Law Jnl* 455, 457.

1,200 per cent. That started from a very small base of \$20,000 to \$30,000 per week. In October 1999, betting had reached between \$200,000 and \$400,000.⁶⁴

Gambling on the Internet is unstoppable but not necessarily uncontrollable. The question is whether the revenue to be gained from Internet gambling will remain, for the main part, in New Zealand or go overseas. On the 17 July 2000, the United States moved towards opening the gates of on-line betting. Rejection of the Internet Prohibition Act (discussed later) opened the way for American-based Internet gaming operations to be set up in competition with Australian company Canbet. Most of Canbet's revenue comes from the United States.⁶⁵ Our "own" Sky City has taken a strategic 33per cent holding in Canbet.⁶⁶ It was widely predicted that overseas Internet gambling sites would be hit hard by the official sanction of on-line gambling in the United States.⁶⁷ Furthermore on-line casinos have already based themselves in the Pacific, Russia, the Caribbean and Australia as well as elsewhere.

Therefore one regulatory goal is to seek to prevent gaming revenues and related taxes going offshore. However although there may be windfall taxes for the government, that benefit must be tempered with reality. Opportunities on the Internet are already proliferating faster "than rabbits in the Mackenzie Country",⁶⁸ and New Zealand-based sites will be late entrants into the Internet gambling market.

In support of this is a Lotteries Commission report in 1999 saying that there is scope for generating additional revenue selling lotto tickets over the Internet.⁶⁹ The

⁶³ "Opportunity goes begging with Internet Gambling" *The National Business Review*, 13 February 1998, 5.

⁶⁴ "TAB on-line proves a big draw for global gamblers" *The Independent*, 20 October 1999, 22.

⁶⁵ Arguably most of the revenue came from United States because there were attempts to ban all forms of Internet gambling in the United States. Therefore Canbet provided the market that was absent in the United States.

⁶⁶ "Watson and Sky City Place Bet" *The National Business Review*, 21 July 2000.

⁶⁷ However just because Americans can gamble from American-based sites, that doesn't necessarily mean they will. As discussed in the text, Australians, who have a regulated system of Internet gambling, make up over half of New Zealand's TAB's Internet sports betting market.

⁶⁸ "Where wild gambling fantasies lead" above n 17.

⁶⁹ "Lotteries to examine e-commerce Uses" above n 31.

Commission believes Internet lottery games could appeal to the under-25 age group who have been brought up on a diet of computer games, but is unsure whether on-line sales would simply displace revenue that would otherwise be earned from its franchise network. Therefore Internet sales of lottery products may turn out to be no more than another distribution channel for existing players.

However, even our late entrance into TAB sports betting on the Internet shows, there is still large sums of money being made as the above figures show. Internal Affairs gaming manager, Tim Horner, said that on-line casino gambling is vastly different from what the TAB is offering.⁷⁰ And there is general agreement that on-line casinos are money-spinners, even if on-line lotto tickets would not be. Furthermore, regardless of the late entry into the market, money is still there to be made for New Zealand-based Internet gambling sites.

The question then becomes one of determining who will benefit from New Zealand's share of the potential revenue. Will community organisations, as in the past, get funding from these supposed windfalls? Will the money be used to improve institutions dealing with problem gambling since Internet gambling will increase the need for their services? There is a mix of current regulatory goals, and this will have to be clarified with the impact of Internet gambling.

The goal has to be funding of existent societal objectives, as well as not restricting the profits that Internet gambling providers make too much. This will ensure that providers want to remain New Zealand-based in order to fund these societal objectives. This regulatory goal must be consistent with gambling in general, as Internet gambling is just another form of gambling. Thus although gambling has some morality concerns, it is allowed if it contributes to societal objectives (and that includes general revenue) and the problems gambling causes. Similarly the same rationale applies to Internet gambling, and revenue from Internet gambling must be used for the same purpose.

⁷⁰ "Place your bets on the Net - casino plea" *Sunday Star Times*, 14 June 1998, 3.

Thus in order to benefit from New Zealand-based Internet gambling sites, another policy goal then another goal must be the clarification of matters involving electronic "borderless" gambling transactions. For example, there needs to be certainty that New Zealand banks will pay credit card debts, subject to available credit. This accords with the general principle that certainty in the law is beneficial and desirable.

E Consumer protection

Regulatory issues relate to controlling the outputs for gambling. These essentially ensure that the odds are disclosed so that there is information for consumers to make an informed choice, that the odds are not rigged and that operators generally behave with propriety. For example, on-line photo finishes are available instantly for most on-line-bets for races.⁷¹ It should be noted that it is difficult for regulators to control minimum gaming standards as Internet casinos can just as easily operate outside New Zealand's jurisdiction and thereby bypass regulatory controls. However consumer protection is a valid goal and it is pursued currently. Therefore the same rationale applies as to why consumer protection is desirable. Furthermore, consumer protection is more relevant given technology can be used to unfairly reduce the chances of winning.⁷²

Another aspect of consumer protection relates to the fact that the average size of the bet placed is substantially larger on-line than other betting channels. Tony Waldegrave, Internet business manager of Tab's on-line betting service, says the average retail bet is \$6, by phone it is \$12 but on the internet is around \$20.⁷³ This is not necessarily a negative effect, as that does not mean that the large betters are compulsive gamblers. And their money is their property to do what they want with. However in Australia where poker losses exceed national savings, should society step in to prevent such losses through Internet gambling (assuming that a similar

⁷¹ "TAB on-line proves a big draw for global gamblers" above n 64.

⁷² The concerns of on-line gamblers were highlighted in results of Greenfield On-line's "What Are The Odds?" study, conducted between 25 May to 1 June 2000.
<<http://www.casinowire.com/archive/200009/1950.shtml>>

⁷³ "TAB on-line proves a big draw for global gamblers" above n 64.

effect will occur here)? Or should we pursue a policy of "caveat aleator" - that is, "gambler beware"?

As discussed earlier, the financial returns of Internet gambling are a desirable policy reason for regulation. Therefore the limits placed on the operation of Internet gaming providers must not be perceived to be too onerous if we want to encourage New Zealand-based Internet gaming providers. If it is acceptable in current gambling that some forms of gambling do not limit the amount bet, then it could be acceptable in relation to Internet gambling. However, it makes sense in relation to Internet gambling for three reasons. Putting a financial limit on the amounts gambled restricts the competitiveness of sites when other countries do not place these limitations. Thus limitations on the permissible amount to bet may reduce the revenue of those sites as gamblers can bet more amounts elsewhere. Furthermore, such limitations are easy to avoid by setting up sites in countries where the rules are more lenient. Finally, as discussed earlier, the relevance of the satisfaction of individual preferences must be considered. Assuming that it is the gambler's money, it is theirs to do what they want with. Therefore consumer protection through control of the amount bet is not a feasible policy goal in relation to Internet gambling.

F Concerns about associated criminality

The NGISC report also states that anonymity on the Internet also raises the potential for criminal activities in several ways. First, there is the possibility of abuse by gambling operators. As gambling sites are very mobile,⁷⁴ it is possible for dishonest operators to take credit card numbers and money from deposited accounts and close down. Second, computer hackers or gambling operators may tamper with gambling software to manipulate games to their benefit.⁷⁵ Third, gambling on the Internet may provide an easy means for money laundering. To launder money, the report states that a person need only deposit money into an offshore account, use those funds to gamble, lose a small percentage of the original

⁷⁴ Sites can be easily altered, moved or entirely removed within minutes.

⁷⁵ For example hackers broke into the Western Union web site and stole credit.
<<http://www.casinowire.com/archive/200009/1966.shtml>>

funds, then cash out the remaining funds. Through the dual protection of encryption and anonymity, much of this activity can occur undetected.

A study done by the United States Office for Science and Technology policy and the Financial Crimes Enforcement Network for the Critical Technologies Institute raises several essential concerns regarding the use of the Internet for money laundering activities, including the lack of uniform international law and oversight of a regulatory regime, the ease of transferring funds across international borders, and the high degree of anonymity and accountability.⁷⁶ However, the NGISC report states that there are many ways to frustrate criminal activities.

Concerns about associated criminality of money laundering and fraud are a relevant policy goal. These concerns affect the economic and consumer protection motives directly, and the effectiveness of the societal objectives indirectly. Fraud and criminality affects the revenue from Internet gambling that could contribute to New Zealand's societal and financial objectives. Improperly affects the quality of service received, for example, in terms of rigged odds. As these have been identified as valid policy goals, criminality is a relevant policy concern as an issue that frustrates the other goals.⁷⁷ Like criminal activities in general, it is expected that the government will intervene to some extent. The limit of intervention is, of course, what is efficient and effective.

G Consistency with the Current Regulatory Scheme

Also if there were extension of the current gaming laws, the rights and obligations of internet gaming sites must be consistent with the rules we place on off-line casinos and sports-betting agencies. Fairness and the integrity of our legal system would require as much consistency as possible, subject to the technological constraints placed on monitoring and enforcement by the Internet. For example it is

⁷⁶ "Against on-line gambling" above n 47.

⁷⁷ This should be distinguished from Internet gambling being used to fund other criminal or illegal activities. For example if a drug cartel was using Internet gambling to fund some of its illegitimate activities, then it is something for narcotic enforcement authorities to deal with as a narcotics issue, as opposed to Internet gambling. Although it is difficult to draw the line,

currently illegal to set up an on-line casino in New Zealand. However, the TAB is allowed to offer sports betting through the Internet. The Washington-based National Gambling Impact Study Commission ("the NGISC") advised in 1999 that Internet gambling be outlawed completely in the United States.⁷⁸ However Jim Leach, Wellington-based corporate affairs manager of the TAB makes a distinction between the two forms of gambling that are not drawn by the NGISC. He says that:⁷⁹ "All the anecdotal evidence suggests if you are in an on-line situation you have in simulated casinos, you are more likely to lose control", which implies that this may be problematic and require different goals and methods for its different effects.

VI THE 'SUBJECT' OF POTENTIAL REGULATION

Decisions as to the possible methods of regulation are ineffective without determining the subject matter, or target, of potential regulation. Internet gaming sites are divided into three categories.⁸⁰ First of all there are the Internet pages of companies or organisations which only want to present and market themselves.

The second group is formed by the organisations and institutions that only provide gambling related information. The increasingly visible trend of these sites is pointing players towards the "reliable" gaming sites with the establishment of top-10 and top-100 sites. It is argued that this group is an example of industry-regulation. It is the final category of gaming sites that is relevant to this paper as the subject of potential regulation.

generally valid policy intervention is justified if the criminality affects the policy goals of Internet gambling as opposed to general criminality which is best dealt with by existing laws.

⁷⁸ "TAB says legal doubts cloud Use of credit cards on Net" *New Zealand Infotech Weekly*, 14 June 1999, 1.

⁷⁹ "TAB says legal doubts cloud Use of credit cards on Net" above n 78.

⁸⁰ The trade in attractive and suitable domain names (such as www.luckycasino.com and www.winlotto.com) is also increasing in intensity. However, this category as a subject for potential regulation, is outside the ambit of this paper's scope. Although domain names are relevant to establishing reputable gaming sites. Speculators, here and overseas, have reserved New Zealand domain names like gamble.co.NewZealand, on-linecasino.co, poker.co.NewZealand and blackjack.co.NewZealand. These can be sold or leased from Internet sites as well. In anticipation of the legalisation and regulation of New Zealand virtual casinos, domain names are a good investment because, like personalised number plates, they do not have to be sold. "How on-line casinos are beating the regulations" *The Dominion*, 21 October 1999, 9.

The "real gambling sites" form the third group. It is actually possible to play for money on these Internet sites. The games include virtual casinos, Internet draws and lotteries, bingo games and sports betting (bookmakers). The supply of games extends from traditional forms of gaming to all kinds of events. For instance, it is possible to gamble on the result of various stock and option exchanges.

VII WHAT WOULD HAPPEN IN THE ABSENCE OF REGULATION?

Estimates drawn up in 1995 are that New Zealanders would spend between \$850 million and \$3.4 billion gambling through information networks by 2029. If this was conducted through offshore virtual casinos and displaced conventional gambling activities, the Crown stood to lose between \$79 and \$316 million in duties and taxes, while community causes would be between \$115 and \$460 million worse off according to Department of Internal Affairs estimates.⁸¹ In 1996 cyber gambling was estimated to be worth more than UNITED STATES\$50 billion.⁸² Many gaming operations accessible through on-line networks are based overseas, and if all gaming were to go abroad, it was estimated in 1997 that up to \$188 million in duties and \$128 million in GST would be lost to the Government. Although \$460 million would also be lost in community handouts.⁸³ These are significant amounts of money that affect current economic and social goals.

Industry Regulation

There are a number of things that the industry itself could do to achieve some of the goals mentioned above without the use of state resources. The incentives to comply are that the sites are not cheap to run, and given the competition, they must rely on repeat business. Any site that is unreliable is not going to get customers back. The Interactive Gaming Council ("The IGC"), a voluntary trade association

⁸¹ "TAB says legal doubts cloud Use of credit cards on Net" above n 78.

⁸² "Betting on the Net causes global worry" *The Sunday Star Times*, 14 April 1996, 6.

⁸³ "Push for New Zealand to host Internet casinos" *The Dominion*, 17 June 1997, 1.

for the on-line gaming industry, has a number of methods it uses to deal with issues facing on-line gaming.⁸⁴

The IGC has established a publicly available Code of Conduct (see Appendix B) as a voluntary standard to which the Members (see Appendix B) have agreed to adhere to. The IGC has a consumer complaint procedure whereby the public can complain to the IGC if they feel one of their member operators has treated them unfairly, or if consumers have tried to solve the problem without success. Members of the Interactive Gaming Council (IGC) have all agreed to abide by the IGC's Code of Conduct. Although there currently is no specific formal requirement of the members to submit to mediation or arbitration with regard to consumer complaints, where appropriate, members have voluntarily agreed to mediate problems through the offices of the IGC. The IGC's mediation department looks into the matter and tries to help get it resolved. In an effort to assist the public in recognizing interactive gaming operators who meet the IGC standards for fair and responsible practices, the IGC is developing a Seal of Approval program. Furthermore the IGC has a goal of "responsible gaming". It has launched a "Helping Hand Campaign" (see Appendix B) to assist Internet players determine if they have a problem and learn where they can obtain help.

The question arises whether the industry would have effective self-regulation. Although there is acknowledgement that Internet casinos at least are regulating themselves "pretty well",⁸⁵ the answer is no. Not everybody is a member of self-regulatory groups. There are hundreds of gambling sites and less than a hundred are member to the IGC alone. Groups have their own agendas and internal politics. These are not accountable and cannot ensure widespread compliance. It has neither the resources to ensure achievement of the policy goals, nor the will when policy goals place limitations that conflict with their desire to make profit. For example, some sites do not want to pay industry-specific tax, which is an integral element of the social and policy goals described above.

⁸⁴ See also Leslie Alan Horvitz "Cyber gambling proves dicey for bettors, regulators alike" (1996) 12(42) *Insight on the News* 42, 45.

⁸⁵ James Ledbetter ""Shades of Grey" <<http://www.reason.com/9910fe.tb.gamblers.html>>

Therefore there can be industry pressure to protect consumer standards. However this may not always be effective given self-interest of the provider and the desire to maximise profit. Moreover, none of the other goals of gaming regulation are satisfied. In light of the position of the existing government-controlled game providers, a totally unregulated market is undesirable. Gaming will not contribute to specific social and economic goals. There is a concern that existing organisations would not be able to withstand the effect of Internet gambling on off-line gambling.⁸⁶ This depends on whether Internet gambling will take market share away from the off-line market. There is no conclusive evidence that it will (or will not do that) as of yet. If it does, fund-raising activities are at issue as gaming contributes to the cost of problem gambling. Telling gamblers, who would not see themselves as addicts, which help-sites to visit, is not really contributing to the cost of problem gambling. Furthermore, there still would be no specific gaming taxation and industry levies. Although New Zealanders have a mixed view of the morality of gambling, allowing the activity has driven government policy, as long as it can contribute to society and the economy. Reliance on the industry alone is not good enough. As the IGC itself concedes, there is a need for some regulation of interactive gaming.⁸⁷

VIII METHODS OF REGULATION

Discussions about the desirability or possibility of regulation of the second category of Internet gaming sites concentrate on the following models.⁸⁸ First, there are models that allow or "legalise" the new developments of Internet gambling. Examples are Antigua, Curacao, the Dominican Republic, and Lietenstein.

The second model assumes the undesirability of on-line interactive forms of gaming. An example in the United States was the "Kyl Bill". This legislation aimed to penalise both the provision of, as well as (in some cases), the participation in interactive Internet games of chance.

⁸⁶ *Interactive gaming in the Netherlands* above n 24, 3.

⁸⁷ <<http://www.igcouncil.org>>

⁸⁸ *Interactive gaming in the Netherlands* above n 24, 2-3.

A more pragmatic regulatory response is that of Australia (until recently – discussed further later). The focus has been on levying (and payment) of taxation, as well as on protecting the interactive player. The idea is that a legal supply will automatically generate income and will operate reliably and safely of its own accord.

Finally, the European model always takes account of the fact that policy on games of chance is a national affair. Within outlined limits, the Netherlands, the Finnish, and the Swedish governments, for example, have also granted permission for existing national providers of games of chance to offer their products via the Internet.

These broad categories of regulation are discussed further in detail in application to New Zealand below.

A Prohibition

1 The Kyl Bill: an attempt to completely ban Internet gambling

At one extreme we could make it illegal to use any Internet based casino. This method would aim to satisfy the policy goals of ensuring social well-being and restricting access of gaming to minimise harm to young people. The idea being that prohibition will stop the negative social impacts of gambling.

However, this method conflicts with the current policy goals of requiring gaming to contribute to the cost of problem gambling, does not ensure that the industry contributes to specific social and economic goals, there are no gaming specific taxation and industry levies. Furthermore there is no consumer protection through the imposition of conditions and game rules. Ultimately, a policy of prohibition ignores developments of Internet gambling as a part of “e-commerce”.

An example of prohibition was the “Kyl Bill”. For more than three years Arizona Senator Kyl tried to outlaw gambling on the Internet. His Bill had received

bipartisan support but had never made it to the priority queue to be passed before the end of a congressional session. Spurred by the arrival of on-line casinos, the bill was designed to outlaw all Internet gambling and update existing prohibitions on interstate gambling by phone and wire. In 1998, after concessions were made to appease the US\$34 billion horse racing industry and for states to regulate intra-state gambling, the bill was passed by the Senate with a vote of 90-10 but did not have time to proceed to the House.⁸⁹

Under the terms of the bill, Internet service providers must shut down access to any Internet gambling site anywhere in the world when told to do so by a court. Site operators can be fined up to US\$20,000 and jailed for up to four years. On-line companies, eyeing potential business opportunities valued at US\$10 billion in 2000, opposed the bill, saying regulated American-based gaming sites are better than unregulated offshore sites.

The fact must be faced that Internet gaming, especially casinos, is inevitable regardless of one's opinions of gambling. Although legislating against the use would be reasonably easy to initiate, it would be virtually impossible to police. There would need to be significant resources required to monitor usage and prosecute offenders if it can be technically done at all. This would also encourage internet casinos to operate outside of New Zealand which would make issues of jurisdiction particularly difficult as New Zealand could not enforce prohibition when there are other sites available that are set up in other countries.

Briefing papers to the Internal Affairs Department indicate that changing technology may make bans on overseas gambling increasingly futile:⁹⁰ "New Zealand's regulatory regime may be undermined by developments in cross-border gaming. For example, restricting access to gaming and requiring a substantial community contribution may not be viable in the long term."

2 *The Internet Prohibition Act: ISPs become the Internet gambling police*

⁸⁹ "United States moves to outlaw net bets" above n 64. See also Debra Baker "Betting on Cyberspace" (1999) 85 *ABA Journal* 54.

This reason, as well as others,⁹¹ may be why, the United States House of Representatives turned down landmark legislation aimed at banning on-line competition by a 245-159 vote,⁹² after years of discussion about the Internet Prohibition Act,⁹³ which would have banned all forms of internet gambling. However, there were a number of technical, economical and political loopholes in the Bill that would have prevented its passage.

For example, New York officials who tried to stop certain gambling operations from allowing bets on baseball's World Series games, found uncertainty with enforcing the law. The officials discovered the operations under attack had been licensed by the Caribbean Island nations of Antigua and Barbuda. The companies claimed that American officials could not touch them because they were run offshore from those countries. Inquiries only continued when the officials discovered that two New York computer companies were apparently helping host the gambling operations.⁹⁴ If it had not been for that discovery, illegal gambling operations would have continued because the United States would not have had the jurisdiction to do anything about it. That is the problem we face in New Zealand.

Law enforcement may be able to order domestic ISPs to shut down access to individual web sites, although such orders would require ISPs to spend an inordinate amount of time and resources to do so. However, it is nearly impossible

⁹⁰ "CER could open New Zealand to big Aussie lotteries" *The Dominion*, 10 January 2000, 1.

⁹¹ It is thought that lobbyists who would profit from on-line gambling prevented this Bill from passing. There were also key areas of gaming exempted from the Act that rendered the Kyl Bill ineffective. See also Stevie A Kish "Betting on the Net: An analysis of the government's role in addressing Internet gambling" (1999) 52(2) *Federal Communications Law Journal* 449.

⁹² "Watson and Sky City Place Bet" *The National Business Review*, 21 July 2000.

⁹³ The Internet Gambling Prohibition Act ("IGPA") attempted to address both the supply of Internet gaming services and, for the first time at the federal level, broad-based consumer demand as well. IGPA has three enforcement mechanisms for dealing with supply: fines; imprisonment; and mandated closing down of gaming sites on the web. To curb demand, IGPA contains a provision that subjects the so-called "casual bettor" to a maximum fine of \$500 (or the value of the bet, whichever is greater) and/or three months imprisonment. To stop supply, the bill would allow law enforcement to seek injunctions to force Internet Service Providers ("ISPs") to close off access to gaming sites. In short, IGPA hopes to create an electronic wall around the United States - one in which the possibility of sanctions reduces demand for gambling services, while the supply is limited as law enforcement shuts down offending access points.

⁹⁴ "No safety net for on-line gamblers" above n 18.

to close off an entire category of content, since there is no mechanism to automatically identify and screen out types of content from Internet consumers.⁹⁵

Moreover, it is simple for a World Wide Web site to repeatedly change its web address so that the ISP filter does not catch the new address. Another way for providers to circumvent the closing down of specific web sites would be to set up a method of linking the bettor's hardware to the operator's server via modem.

Such an arrangement would eliminate the need to route messages through an ISP and thus would make filtering inconsequential at the individual level. Accordingly, prohibition enforced through ISPs, in practice, would have little effect other than to scare away scrupulous operators, leaving behind only those that willing to break the law to satisfy a very real consumer demand.⁹⁶

With respect to enforcing prohibition through the bettor, clearly, criminalising such activity will have an impact on the demand for gaming services. However, gambling will continue to go on unless examples are made of casual bettors⁹⁷ - a difficult political prospect to defend for elected representatives given current legalisation (to an extent) of gambling.

An additional problem is the manner in which law enforcement obtains information to prosecute casual bettors.⁹⁸ There are three potential sources of such information: from the operator; from the ISP; or from the bettor's computer. If a prohibition is enacted, most, if not all, operators will move overseas, making it nearly impossible for domestic law enforcement authorities to prosecute them. Furthermore prosecuting casual bettors, is also financially, politically costly and time consuming. Therefore such tactics would be rarely used to prosecute gamblers, especially where the dollar amounts in question are minimal.

Another difficulty is that of drafting. For example the Kyl Bill used the traditional paradigm of prize, chance, and consideration to define the term "bets or wagers".

⁹⁵ Above n 87.

⁹⁶ Above n 87.

⁹⁷ Above n 87.

However, this definition also encompassed securities and commodity transactions, life and health insurance binders, fantasy sports leagues, and other similar activities. Thus, any prohibition must be carefully drafted to ensure that non-gaming transactions are not mistakenly defined as Internet wagering. More importantly, any type of broad prohibition intended primarily to reduce the exposure of minors and compulsive gamblers to wagering would actually increase minor and compulsive access. As stated earlier, it is nearly impossible to screen out specific types of content on the World Wide Web.

Nevertheless, a prohibition, as suggested in the Internet Gambling Prohibition Act, would have driven out those who would comply with legal and regulatory burdens (such as identifying and screening minors and compulsive gamblers), leaving only those who are already predisposed to breaking the law to market on-line gaming services from offshore. An example of this dynamic is readily apparent: prohibition of alcohol. Given the relative ease in which information is transmitted on the net, unscrupulous operators would have greater access to vulnerable consumers than if the government had attempted to regulate the industry in the beginning.

In summary, an outright prohibition would be technologically difficult, if not impossible, to enforce on suppliers of interactive wagering services, and equally troubling to enforce on the demand side of the equation. However, it is desirable that attempts are made to control Internet gambling, even though it is difficult to control. Comparison is made to the regulation of pornography even though it is difficult to control the availability of the most objectionable sexual material, or for that matter the spread of illegal material on homemade weapons and manufacturing drugs. Although it is difficult to regulate Internet gambling, the policy concerns outlined earlier and the consequences of reliance on industry-regulation alone, make regulation desirable.

Furthermore gamblers also deserve the same legal protections that other consumers enjoy. Prohibition will not cut off access to Internet gaming. However, it will cut off access to redress. Internet gamblers like any other consumer will suffer fraud

⁹⁸ <<http://www.igcouncil.org/faq.html>>

occasionally. Prohibition merely assures that Internet gamblers will have no recourse to legal remedies. This is hardly fair. Furthermore, government intervention should be driven by what is happening instead of what society ought to be according to some.⁹⁹ Given the weaknesses in prohibition, other methods of government intervention are examined below.

B Multilateral Agreements

Adopting an international policy against online gambling is not a viable policy alternative.¹⁰⁰ Unless there is some uniform policy about on-line gambling among the different countries, there will always be different regimes in place giving incentive to non-uniform practices. Given that many countries like Antigua and Monaco openly embrace Internet gambling, a uniform international policy is unlikely. Moreover, even assuming that all countries agreed to a uniform policy, it would still be difficult to enforce it because of the technological challenges to reasons. While an international policy is both infeasible to establish and enforce, government licensing, regulatory and taxation schemes are possible to establish and enforce.¹⁰¹

C Licensing System

To alleviate the difficulties associated with Internet gambling, New Zealand could allow companies involved in this activity to set up and gain special gaming licences here. By doing this, we may minimise the chances of criminal elements being involved and on-line operators would be more willing to comply with

⁹⁹ Edward E Zajac, *Political Economy of Fairness* (MIT Press, Cambridge, 1995).

¹⁰⁰ Andrea M Lessani "How much do you want to bet that the Internet Gambling Prohibition Act of 1997 is not the Most Effective Way to Tackle the Problems of On-line Gambling?" (The UCLA Online Institute for Cyberspace Law and Policy, <<http://www.gseis.ucla.edu/iclp/alessani.html>> Last accessed 8 August 2000).

¹⁰¹ Sometimes regulation at a multilateral level is more efficient. However not in the case of Internet gambling where a domestic system can be regulated effectively domestically as the discussion about licensing systems show. For a general discussion about a multilateral approach, see David Goddard "Making Business Law: The CER Dimension" (Report for the New Zealand Ministry of Commerce, 1999) available at <http://www.med.govt.NZ/gbl/bus_pol/bus_law/cergoddard/index.html>

licensing and taxation requirements than a ban. Such a system also prevents on-line gambling going underground and therefore ensures on-line gamblers are dealing with legitimate gambling operations, given that they are going to gamble anyway as the figures more than amply demonstrate.

There are, at least, two types of licensing systems. The first is to statutorily prohibit anything that is not licensed. It is possible to prohibit ISPs to link to sites that are not approved. Experience shows that the provision of interactive services requires considerable costs and efforts. Thus forbidding the connection of certain sites would not make these costs and efforts worthwhile for unlicensed operators.

The second is a "seal" program, which is a natural corollary to current government practice,¹⁰² which allows certain operators in the industry. Theoretically, these 'approved' gambling sites will be subject to similar rules that apply to off-line gaming operators. The first type of licensing system has the benefits of a general licensing system, discussed below, as well as the problems in prohibition, discussed above. The second system has the benefits and difficulties of licensing systems in general. Both types of systems anticipate some level of industry self-regulation as discussed earlier.

1 Can the Internet be regulated?

The first issue to determine is whether the Internet can be regulated at all given the problems faced by prohibition. The answer is that, like other types of content on the Internet, law enforcement authorities could regulate interactive gaming. However, given the global nature of the business, compliance with unilateral gaming regulation (as opposed to a worldwide, or multilateral, enforcement mechanism) requires a balanced approach.

Operators must be convinced that the value of close scrutiny and regulation outweighs the burdens of regulation itself. One method of approaching this

¹⁰² Currently, sites with gaming machines must display an 'Approved Site' sign. Similarly, America On Line has a seal program where consumers buying goods over the Internet can buy sites with a logo of AOL approval as a guarantee of reputation and reliability.

balancing act is to offer domestically-based regulation by a governmental body that has past experience in consumer protection, such as the Commerce Commission, or specifically to gaming, the CCA or the Department of Internal Affairs, or some combination of both.

Assuming that an operator can meet its regulatory requirements (including background investigations, operational review, and consumer screening, and bonding requirements), it would be permitted to offer gaming services on-line.

Such an authority could attempt to close down those New Zealand-based sites that have failed to meet its regulatory criteria. In addition, the regulatory authority could list those on-line wagering sites that have met the burdens imposed by the government for review by consumers and the general public. It is important to note, however, if the regulatory burdens imposed upon operators were perceived to outweigh the value (in terms of consumer confidence) provided by the certification process, these providers would operate from more lenient jurisdictions. This result would take control of some of the positive and negative effects of Internet gambling away from New Zealand regulation.

Other methods used in tandem with such a scheme would include bank or credit controls on gaming transactions with overseas operators, and possibly bilateral agreements with other governments to enforce certain laws. As discussed above multilateral agreements are difficult to establish and enforce given the range of international policies. However bilateral agreements help enforceability somewhat, as one would expect to enter agreements with another consensual party. Such a system would also rely on the need for a regulatory body, which is discussed later.

2 Licensing and Policy Concerns

Current casino operators in this country have to be reliable and honest. New Zealand's reputation overseas is that of a creditable and secure country. This is not the reputation of all countries involved in Internet gambling. We could gain significant revenue from these licensed operators. In 1997, the CCA estimated that the government could earn anywhere between \$500 million up to a billion dollars a

year in tax revenue from Internet casinos licensed to operate from New Zealand web sites.¹⁰³ Our banking system could also attract considerable benefits and employment opportunities within the gaming industry and its infrastructure.¹⁰⁴ Therefore the policy goal of requiring gaming to contribute to specific economic objectives (through, inter alia, imposing gaming specific taxation and industry levies) is addressed. Thus another central government outcome is improving the gaming sector's impact on macro-economic performance.

Our regulations and safeguards would be in place and games would offer bettors at least disclosed odds; demand controls preventing game rigging; and ensure the repatriation of winnings and credit card and information security. For example, the Cook Islands licence an Internet casino named Cyberwin operated by Casinos of the South Pacific. The company said it had taken out insurance to protect players against credit card fraud and to guarantee payment of winnings.¹⁰⁵ Therefore the policy goal of consumer protection through the imposition of conditions and games rules is possible. A regulated system would demand controls preventing game rigging and ensuring the repatriation of winnings and credit card and information security. Thus New Zealand gamblers whose money is currently going to overseas casinos may be happier betting at home, just as they are happier doing their sports betting with the TAB on-line than with overseas Internet bookies,¹⁰⁶ (although there is no conclusive findings on this matter).

It is possible to ensure the fairness of on-line games of chance according to the industry.¹⁰⁷ Given a viable regulatory regime, ensuring the fairness of games of chance on-line is no different from ensuring the fairness of a video poker machine in a Las Vegas casino. In fact, it is much easier to protect on-line consumers from rigged games of chance.

¹⁰³ "Internet gambling could earn \$1b" *The Timaru Herald*, 17 June 1997, 2.

¹⁰⁴ For example there are opportunities in developing, marketing and distributing Internet gaming products.

¹⁰⁵ "Internet gambling could earn \$1b" above n 103.

¹⁰⁶ "How on-line casinos are beating the regulations" *The Dominion* 21 October 1999, 9.

¹⁰⁷ Above n 98.

At least one vendor provides software that it claims can be audited in real time. And using actuarial tables, regulators could perform random spot-checks on a Web casino as frequently as they deemed fit without even leaving their own offices. Inspection of computer codes would also identify faults in computer-operated games of chance such as roulette, blackjack, or computerized slot machines for errors or deliberate cheats.

The Christchurch Casino plan for an on-line casino,¹⁰⁸ based on a credit card system envisaged security passwords and other checks to prevent young people from gambling. Therefore it is possible to meet the current policy goal of restricting access to minimise harm to young people. Although it should be noted that this planned web site was not approved. However, there are other measures that can be taken. The Department of Internal Affairs is addressing Internet gambling and has published Internet-access suggestions to help parents educate and "regulate" their children's behaviour. This on its own may not necessarily be enough in some cases. However in addition to some industry action, there are some measures available to counter-act the problem of youth gambling.

The IGC has discussed how sites currently prohibit kids from gambling on the Internet. Clearly, internet wagering operators have an interest in screening minors out from gaming activities, as gambling debts incurred by minors are uncollectable in the United States, as it is in New Zealand. However, the mechanisms vary from site to site. Many require the use of credit cards, since any extension of credit generally requires that the prospective debtor be of the age of majority. Some use credit reporting databases to match taxpayer identification numbers with credit cards to verify that the credit card submitted matches the true identity of the bettor. Others require that the applicant fax or present copies of birth certificates, driver licences, and/or other identity documents before processing any transactions. Regardless of the type of identity checks used, most sites require the posting of a significant amount (often a \$1,000 minimum) in a wagering account to begin. Such large up-front deposits function not only to screen out minors, but to eliminate those who are less capable of sustaining losses from the betting pool as well. In

¹⁰⁸ This is different from its current on-line casino site for "fun money".

addition, businesses are springing up whose sole purpose is to verify the age or identity of an Internet user. These adult verification services provide operators with an assurance that a user is who they say they are. These progressions can be used in tandem with the extension of laws to satisfy the policy goal of protecting youth from harm to an extent.

Under New Zealand law, if a child does steal a consumer's credit card and can circumvent the security procedures designed to keep minors out of on-line gaming sites, all the consumer has to do is explain the situation to his or her credit card company. He or she will not be held liable for those charges that have been incurred as a fraud upon them. Therefore if a minor did get past screening processes, neither the credit card companies nor the casinos themselves could collect any debts incurred. Thus, both casinos and credit card companies have strong incentives to verify the actual identity of those engaging in any on-line transaction in order to minimize their own exposure to liability.

Licensing and problem gambling

To alleviate the problems of compulsive gambling, part of this taxation revenue (or even a special levy) could be spent in educating people of the dangers involved and financing agencies offering assistance to addicts who wish to break the habit. Therefore the policy goals of ensuring the industry contributes to the cost of problem gambling is met.

To this end, it is also possible for sites to identify and screen out compulsive gamblers.¹⁰⁹ Ironically, because of data tracking technology, Internet casinos are far more capable of tracking and screening out compulsive gamblers than their traditional "brick and mortar" cousins. Every electronic funds transfer, whether by credit or by wire, provides an electronic record, even when the identity of the source is unknown. Moreover, gamblers establish track records with the casinos that they frequent. Both of these sources of information can be readily culled for

¹⁰⁹ Above n 98.

data that can identify patterns of compulsive behavior. And unlike the memories of a dealer or a pit boss, these records can be preserved indefinitely.

The IGC is looking at forming a United States database that could be used to identify and screen out compulsive gamblers and minors. However, it is in the discussion stage only and would require an exemption from federal antitrust laws. However, there are some privacy and costs issues here. But it would be a model of interest to New Zealand when more fully developed.

The question is does the problems that ensue from prohibition, make consumer protection and regulatory control over operators unlikely too? Domestic legislation has limited value in controlling Internet activity. By its very nature, the Internet is not only resistant to external control but also disregards political and geographical boundaries.¹¹⁰ Local and international sites can still operate from elsewhere if they are not happy with the level of controls imposed by regulation. Thus the problems of a licensing system must be examined.

3 *Problems with the licensing system*

Here the discussion centres on mandatory or legislation-based programs as voluntary seal programs were discussed earlier in the example of voluntary self-regulation.

It should be remembered that it is not difficult to circumvent a licence system that tries to prohibit those that are unlicensed.¹¹¹ With the advent of strong encryption software, those who wish to place bets can do so without the threat of anyone (including most government agencies) intercepting and decoding their messages.

Technological advances such as Secure Socket Layers (SSL) ensure that all data traveling between points A and B on a network is encrypted. All but the most expensive and time-consuming monitoring techniques can be easily defeated with this off-the-shelf technology. It would be quite easy for on-line casinos to write and

¹¹⁰ "Who bangs down the gravel in cyberspace?" *The National Business Review*, 11 July 1997, 46.

distribute client software that would allow a bettor to communicate with a casino without any intermediate party being able to understand what was being said.

While it is technically possible to defeat these encryption systems, it is likely that intercepting even a small number of transactions would be prohibitively expensive, and would require vast amounts of time and dedicated computing power. In addition, the potential for anonymity on the Internet is vast. Even without using encryption, a user can remain nearly faceless.

Internet users in Finland have developed a server that will take an e-mail message, strip all identifying headers, and forward the text to an address specified by the sender. The recipient (and any other parties that observe the retransmission) will have no idea where the message actually originated. Another example is in Spain where the police closed down BingoNet, an Internet bingo site operating within Almeria. Nevertheless, the site is still up.¹¹²

These developments make tracking and intercepting communications - activities necessary for enforcement of prohibition - much more difficult. It is important to see if these "costs" outweigh the benefits described earlier. Thus comparison with Australia, a hybrid mandatory and voluntary scheme is examined below.

4 Comparison with Australia's licensing system

The Australian system is a government initiative that gives licences to gaming site providers. The licence is given when major provisions are made clear. For example information about the player is given (so that youngsters cannot play), and that a deposit is made before playing is possible.

In March this year, Australia put a moratorium on Internet gambling and banned the Use of credit cards to bet on-line. The action was spurred by Netbet, a Senate committee report which stated that Australia's 290,000 problem gamblers each lose A\$12,000 a year and the problem has increased with developing technology.

¹¹¹ Above n 98.

The committee recommends limiting the number of on-line gambling licences to 14 until other measures are introduced to protect e-gamblers.¹¹³ Therefore while ensuring contribution to the cost of problem gambling, the industry has also increased the social costs of gambling and thereby increasing the negative impact on social well being.

The on-line ban has, unsurprisingly, upset the Australian gaming industry. Australia's Internet gambling industry claims they risk losing up to US\$4.5 billion a year if the government blocks new on-line gaming licences and curbs the industry's growth.¹¹⁴ However, the Moratorium does not necessarily signal an end to the licensing system. It has, however, called for reform of the system as is discussed below.

C Appointment of an independent gambling regulator

The Australian Productivity Commission says that "problem gamblers" account for only 2.3per cent of the population, but lose nearly A\$4 billion a year – a third of all gambling revenue. The report found that a "lack of attention to basic consumer protection" suggests a need for an independent gambling regulator. Specifically, gamblers have little awareness of the odds they are up against. Their chances of winning should be clearly spelt out. The report found that "managed liberalisation" could ensure Internet gambling would not exacerbate the existing problems associated with gambling – divorce, suicide and financial ruin.

A regulatory body would require gaming to contribute to specific social and economic objectives; ensure the industry contributes to the costs of problem gambling; impose gaming specific taxation and industry levies, ensure consumer protection through the imposition of conditions and game rules; ensure efforts to restrict access by youth. Thus the government would mean that the gaming sector would impact on macro-economic performance; there would be fiscal responsibility in regulation; ensure social well-being because of the policy goals

¹¹² <<http://www.eur.nl/frg/si/arjan/home.html>>

¹¹³ *The Independent* 22 March 2000, 30.

above; and the role of Internet gaming as a part of the developing area of e-commerce would be acknowledged.

One option would be to form an Internet gaming board made up of members independent of control by the regulated. They could or should consist of, inter alia, a former regulator, an auditing agency, and legal gaming specialists. The board, as in Nevada, New Jersey and Great Britain, should be all-powerful in demanding suitability of any applicant. The board would also have as its function insuring the integrity of the offered games, preferably through the use of a prominent auditing firm; insuring the financial solvency of all Internet casinos; and requiring that all disputes between a patron and Internet casino owners be decided by compulsory arbitration. This is not an area where the industry should be self-regulatory (as discussed earlier). Legalised casino gambling has been successful in excluding organised crime largely because of a powerful gambling board, such as those mentioned earlier, which mandates that the applicant proves suitability.¹¹⁵ The integrity of Internet gambling operators is already a controversial area, as two major Internet gaming operators have been uncovered as having criminal histories including bank fraud and association with organised crime.¹¹⁶

D Extension of Current Laws and Technology

1 Extending current laws to financial transactions

One example is as follows. Consumers are not guaranteed winnings from games of chance. Therefore repatriation of funds should not be taxable, as they are winning from games of chance and therefore not liable. Furthermore, the NGISC recommends that credit card debts incurred while gambling on the Internet be deemed "unrecoverable" and wire transfers to known Internet gambling sites banned.¹¹⁷ However although internet gambling sites would be left with huge,

¹¹⁴ "Australian Gaming Industry Warns of On-line Ban", Reuters, 23 May 2000, <<http://www.gamblingregistry.com.news2.html>>

¹¹⁵ "Internet gaming: What are the odds for on-line betting suites and casinos reaching their full potential?" above n 62.

¹¹⁶ S J Collesano "Internet Gaming Board" (1997) *Gaming Law Review* 31-33.

¹¹⁷ "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

potentially unrecoverable, financial liabilities, citizens could still transfer funds through offshore bank accounts or credit cards issued overseas and fool gaming sites by logging in via overseas internet access providers. The example illustrates how current laws even if extended would be defeated by the very practical difficulties posed by the Internet.

Financial issues relating to the movement of capital between countries and different banking systems are important too. New Zealanders have been free for many years to move capital outside the country and use credit cards in New Zealand for overseas transactions. Our financial markets are among the most progressive among the world. Any move to close down those freedoms, to prevent credit card fraud and problem gambling, would have completely untenable consequences, and could not be enforced in the case of Internet gambling anyway as discussed above. Consequently, there appears to be little chance of restricting New Zealanders' use of credit cards for offshore transactions, whether on the Internet or elsewhere.¹¹⁸ Therefore it would not be a desirable policy goal to regulate the market by interfering with our financial markets.¹¹⁹

For example as part of Internet betting, gamblers can transfer funds to their TAB account via credit card. At an international level, TAB corporate affairs manager Jim Leach says that the Internet betting and credit card facility was aimed at overseas gamblers as more than 90 per cent of people inquiring about opening accounts with the TAB through the Internet were from overseas. At a local level, primarily New Zealanders who knew of the TAB would use Internet betting. New Zealand gamblers would thus trust the TAB with their card number more than Internet gambling sites based in the Bahamas or Luxembourg. If it became difficult for the TAB to make its sites more accessible to consumers through credit card facilities, it could just set up its activities from another country thereby bypassing

¹¹⁸ Compare "Are credit card companies gambling with the 'Net?'" (1998) 11(6) *Credit Card Management* 10. See also "A wide world of credit card gambling" (1997) 10(5) *Credit Card Management* 12.

¹¹⁹ Compare this with, Bob Goodlatte who is rewriting the original Internet Gambling Prohibition Act. The new proposal "says that no money orders or checks [cheques] or credit cards can be used in an Internet gambling transaction." Thus financial institutions become de facto Internet police by restricting credit card transactions with offshore casinos, compared to

the jurisdiction of New Zealand law. Therefore extension of current laws regarding credit facilities would probably be ineffective.¹²⁰

2 Extending current laws to Internet sites

The technological difficulty in extending current laws is also illustrated by the following example. A Caribbean casino is operating from a New Zealand internet site, that is a ".nz" domain name, despite tight New Zealand regulations which stymied the Christchurch Casino's attempt to expand its services on-line. The Grenada-based Caribbean Cyber Casino International is trading on New Zealand's international reputation by operating from a New Zealand domain name. Its servers are in Grenada, but its domain name identifies it as a Kiwi Internet site.¹²¹ However, this can be controlled by our current registration system of domain names. Although, Patrick O'Brien, chief executive of Domainz, which manages New Zealand's domain name space, says the organisation is not responsible for policing content on the Internet.¹²² The concern is that gamblers may believe New Zealand law regulates a site with a ".nz" Internet address.

Thus although the law is used to regulate technology, technology can be used to help the law regulate technology too.¹²³ Although the assumption appears to be that what applies off-line should also apply on-line, a Netherlands interactive gaming study has indicated that it may be difficult to maintain such a point of view.¹²⁴ After all, there are hardly any clear boundaries (neither domestically nor abroad), nor is there a clear time or place where at which a particular transaction is entered into. However rules on the electronic highway should be upheld. Excesses and obvious wrongdoing should be counteracted using the instruments and with wide-ranging international consultation. Forms of technological prevention are very

the ISPs with the last version of the Act.

<http://www.casinowire.com/archive/200009/1991.shtml>

¹²⁰ There are also other methods in which to frustrate credit facility restrictions. For example there is the Use of digital cash instead of credit cards. There's also the difficulty for financial institutions to detect certain forbidden sites.

¹²¹ "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

¹²² "Counsellor: Bosses should be aware of virtual casino danger" above n 36.

¹²³ See Graham Greenleaf "An Endnote on Regulating Cyberspace: Architecture Vs law?" (1998) 21(2) *UNSW Law Jnl* 593.

¹²⁴ *Interactive gaming in the Netherlands* above n 24.

important and should be emphasised and are relevant to the extension of current laws.

For example developments by some credit card facilities aim to reduce credit card fraud in relation to Internet transactions generally.¹²⁵ Amax is currently instituting a system whereby a credit card holder applies for a list of credit card numbers and each number can be used once for each transaction on the Internet. And thus the opportunity for fraud is reduced.

3 *Extension of laws to underage Internet gamblers*

This is also relevant in regard to restricting access of Internet gambling to youth. Clearly, Internet wagering operators have an interest in screening out minors from gaming activities, as gambling debt, like any debt, incurred as credit card fraud on their parents is not collectable in New Zealand. The IGC has discussed how sites currently prohibit children from gambling on the Internet. The mechanisms vary from site to site. Many require the use of credit cards, as the extension of credit generally requires that the prospective debtor be of the age of majority. Some use credit reporting databases to match taxpayer identification numbers with credit cards to verify that the credit card submitted matches the true identity of the bettor. On other more rare instances, others require that the applicant fax or present copies of birth certificates, drivers' licences, and/or other identity documents before processing any transactions.

Regardless of the type of identity check used, most sites require the posting of a significant amount (often a minimum of \$1,000) in a wagering account to begin with. Such large up-front deposits function not only to screen out minors, but to eliminate those who are less capable of sustaining losses from the betting pool as well. In addition, there is an emergence of businesses, whose sole purpose is to verify the age or identity of an Internet user. These adult verification services provide operators with an assurance that a user is who they say they are. These

¹²⁵ See also Richard Smith "How to lose your home without ever having to leave it" (1999) *Credit Management* 20.

progressions can be used in tandem with the extension of laws to satisfy the policy goal of protecting youth from the harms of Internet gambling as much as possible.

In New Zealand, every person commits an offence who, being a member, officer, agent, or employee of a racing club, or of the TAB, or an employee of an agent of the Board, knowingly receives, registers, or takes into account, or knowingly permits to be received, registered, or taken into account, any bet by any person apparently under the age of 18 years.¹²⁶ This applies whether that person makes the bet on his or her own behalf or on behalf of any other person.¹²⁷ Every person under the age of 18 years commits an offence where he or she makes or attempts to make a bet, whether on his or her own behalf or on behalf of another person.¹²⁸ It is prohibited to sell tickets in New Zealand instant games, such as "Instant Kiwi", to persons under the age of 16.¹²⁹ This also applies to any person knowingly extending credit to someone under 16 for the purpose of enabling him or her to participate in such a game.¹³⁰ These provisions apply whether the child purchased, or intended to purchase the ticket on his or her own behalf, or on the behalf of any other person.¹³¹ It is, however, a defence to charges under these provisions if the defendant proves that he or she believed on reasonable grounds that the person to whom the charge relates had attained the age of 16 years.¹³² There are no restrictions regarding age placed on the sale or purchase of tickets in New Zealand lotteries, such as "Lotto".¹³³

¹²⁶ s100(2)(a) Racing Act 1971. "Bet" means a bet made on a totalisator or at a totalisator agency or on an off-course totalisator, or participation in equalisator betting: s 100(1).

¹²⁷ s100(2)(a) Racing Act 1971.

¹²⁸ s100(3) Racing Act 1971.

¹²⁹ s116ZE Gaming and Lotteries Act 1977. A "New Zealand instant game" means a game promoted under Part VII (ss71 - 116ZE) of the Act, in respect of which direct or indirect consideration is paid to participate, and which is played with a view to winning money or money's worth, and in which the ticket or tickets bearing a prize are determined in accordance with s71.

¹³⁰ s116ZE(1)(b) Gaming and Lotteries Act 1977.

¹³¹ s116ZE(1)(a) and (b) Gaming and Lotteries Act 1977.

¹³² s116ZE(2) Gaming and Lotteries Act 1977.

¹³³ A "New Zealand lottery" means a scheme or device promoted under Part VII (ss71 - 116ZE) of the Gaming and Lotteries Act, in respect of which direct or indirect consideration is paid to participate and by which prizes of money or money's worth are distributed according to a draw; this includes lotto, a raffle, a sweepstake, and every other similar scheme or device so promoted: s 71 Gaming and Lotteries Act 1977.

Therefore where there are age limits in off-line forms of gambling, where that is extended to the Internet, it is not only desirable, but possible, for the laws to apply to Internet gambling too.

Equally important, gambling debts as well as contractual obligations are unenforceable in the common law. Therefore even if a minor gets past the screening process, any debts incurred would be uncollectable by either the credit card companies or the casinos themselves. Thus both the casino (of the off-line and on-line sort) and the credit card company have strong incentives to verify the actual identity of those engaging in any on-line transaction in order to minimise their own risk of loss of recoverable debt and/or their own exposure to liability.

IX IS THE REGULATION OF INTERNET GAMBLING A LOST BET?

New Zealanders gamble significant sums of money. We have done so for generations. But never have we had a society like this, where the temptations and opportunities are so many, varied and quick. The growth of Lotto and "scratchies", the increasing number of casinos and the burgeoning ability to use the Internet all increase this. We need to learn how to live among it all because we do not have the collective will, or ability, to restrict it. The current policy of no-policy is questionable as Internet gaming is already happening. We cannot afford to sit on our hands and do nothing because there are benefits and negative effects of on-line gambling.

The Internet is far better at setting up transactions than the authorities are at suppressing them.¹³⁴ While prohibition may result in catching some of the more egregious offenders, it is accepted that prohibition would be largely ineffective. The next option is legalisation and regulation.

Some proponents argue that if prohibition will not work, then neither will any regulatory schemes. However such an argument fundamentally misunderstands a basic principle of governance. Regulations can succeed even where prohibition

¹³⁴ "Incoming Tides" above n 21.

fails if they offer the benefits that exceed their burdens. According to one commentator:¹³⁵

In the case of Internet gambling, the benefits of winning an official stamp of approval might convince an on-line casino to submit to regulation, even if that same casino could easily flout a total ban on its business. Exactly how much regulation will the Internet gambling industry tolerate? In all likelihood, not very much – but only practical experience can settle that question.

The last word on this issue is far from being written. Internet gambling is an evolving scenario, and we must constantly examine our policies and systems, and evaluate them as necessary. In the mean time, legislators addressing Internet gambling cannot rely on existing gambling laws. Rather, lawmakers must create a new regulatory scheme capable of dealing with the specific challenges posed by the Internet to current, and novel, policy concerns.

What is required is a multi-faceted approach where there is a licensing system that encourages credibility, consumer protection, and control of revenue and contribution to societal concerns. A system that has both voluntary rules and mandatory rules ensures consistency and a counter-acting effect of the weaknesses of one particular system over another. Thus the “market” as a whole (gamblers, industry, and regulators) is mobilised to help regulate the challenges posed by Internet gambling. This is what Zajac refers to as seeking incentive-compatible regulatory mechanisms.¹³⁶ By taking account of all interests and aiming to accommodate them as much as possible given policy concerns, there is a more effective and efficient method of regulation. It is especially effective as it takes account of what is happening in society instead of trying to hold parties to unrealistic standards. All parties will participate ensuring effectiveness at all levels. It is more efficient as there is not reliance on one party only.

¹³⁵ Testimony of Tom Bell (Director of the Telecommunications & Technology Studies, Cato Institute, Washington, DC) before the National Gambling Impact Study Commission, Chicago, Illinois, 21 May 1998 regarding *Internet Gambling: Prohibition v Legalization*, 2-3.

¹³⁶ *Political Economies of Fairness* above n 99,169

Thus the regulation of Internet gambling is not a lost bet if it ensures the accommodation of all interested parties. Such an approach ensures maximum commitment to policy goals and is thus a sure bet.

GAMING EXPENDITURE 1979-1999

(figures adjusted for year end 30 June rounded to the nearest million)

Year	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Total	148	152	155	169	181	204	221	249	275	303	327	354	383	407	428	449	473	497	523	548	572
Land-based	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Online	48	52	55	69	81	104	121	149	175	200	227	254	283	307	328	349	373	397	423	448	472
Commission	10	12	13	16	19	24	28	34	40	46	53	61	69	76	82	88	94	100	107	114	121
Other	38	40	42	49	58	74	88	105	125	145	164	183	204	221	236	251	270	290	316	334	351

GAMING EXPENDITURE 1979-1999

66 Actual (non-inflation adjusted) for year end 30 June¹ rounded to the nearest million.

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
RACING																					
Expenditure	89	96	106	127	140	152	164	181	211	220	232	230	222	203	198	199	209	211	217	220	225
Dividends	376	408	432	479	532	578	602	655	764	802	848	815	789	717	704	712	746	822	914	928	921
Turnover	465	504	537	606	672	730	767	836	975	1022	1080	1045	1012	920	901	910	954	1034	1131	1148	1145
NZ LOTTERIES COMMISSION																					
Expenditure	13	22	26	28	28	39	40	40	38	95	194	252	246	250	247	270	275	281	285	288	288
Prizes	17	32	37	41	42	58	61	58	60	124	239	292	288	305	311	338	348	344	348	351	356
Turnover	30	54	62	68	70	97	101	98	98	219	433	544	534	556	558	608	623	626	633	639	644
GAMING MACHINES (outside Casinos)																					
Expenditure													107	110	122	145	171	197	230	292	360
CASINOS																					
Expenditure																	40	117	241	245	294
TOTAL																					
Expenditure	102	118	132	155	168	191	204	221	249	315	426	482	575	563	567	614	695	807	973	1045	1167

- ¹ Most gaming operators have a balance date of 30 June. Where the balance date differs (eg racing at 31 July) the figures shown are as at the balance date.
- ² The 1989 figures for the NZ Lotteries Commission are for 15 months as the financial year changed from 31 March to 30 June.
- ³ Racing data for 1996 and onwards are not strictly comparable with previous years (see Explanations below).

EXPLANATIONS

Turnover is the total (gross) amount wagered by punters. This figure is published by the Lotteries Commission and by the TAB for the racing industry. It includes a "churn" factor or re-investment where the same dollar is counted more than once. This is particularly relevant for rapid re-investment forms of gaming like gaming machines or race betting. Eg. if a player has \$20 to spend on a gaming machine and plays until the full \$20 is lost it is likely that this \$20 will be recorded on the machine's meters as \$120 or more of turnover (gross amount wagered). Turnover is **not** an indicator of the amount spent by players or of the profit of the operator.

Gross Profit and Expenditure are interchangeable terms which mean gross amount wagered minus the amount paid out or credited as prizes or dividends. Expenditure is the amount lost or spent by players or the gross profit of the gaming operator. In the above example, the gross profit calculated by the machine meters will be \$20.

Gaming machine data are estimated using Gaming Duty paid to IRD plus information collected by the Department of Internal Affairs gaming regulatory group. The duty rate of 20% is used to estimate expenditure. Gaming machine turnover is calculated by applying a percentage return to players to the expenditure estimate, of 83% from 1989 - 1991, 85% 1992-1996 and 88% from 1997 inclusive resulting in turnover or gross amount wagered for 1991: \$632m, 1992: \$732m, 1993: \$815m, 1994: \$965m, 1995: \$1,138m, 1996: \$1,313m, 1997: \$1,913m, 1998: \$2,400m, 1999: \$3,000m.

Casino estimated gross amount wagered for 1995: \$313m, 1996: \$914m, 1997: \$1,883m, 1998: \$1,914m, 1999: \$2,297m. 1995 includes a part year trading by the first casino and 1996 includes part year trading by the second casino.

Racing data include the introduction of new products, namely from 1996 inclusive fixed odds & totalisator sports betting and from 1997 inclusive fixed odds race betting. Sports betting turnover included in the turnover totals was 1996: \$4.8m, 1997: \$33.8m, 1998: \$50.0m and 1999: \$61.2m. Data for 1996 and onwards are therefore not strictly comparable with previous years. 1997 and 1998 figures for expenditure and dividends have been revised to correct errors in previous editions of these statistics.

Other licensed forms of gaming (housie, raffles, etc) are not included in the above table. Turnover is approximately \$65million, of which approximately \$45million relates to housie.

DISCLAIMER: The Department of Internal Affairs takes no responsibility for the accuracy of these statistics or any decisions made on the basis of this information.

APPENDIX B

The current members of IGC are:

Full

Antillephone Services N.V.

BetandChat

Betinternet.com PLC

Betmaker.com

Boss Media AB

Gold Club Casino

Caribbean Cyber Casino

Casino Networks Limited

www.casino.net

Cassava Enterprises

Casino on Net

Conet N.V.

Crown Management

Cryptologic

CyberCroupier AB

Cyberlotto

Cyberoad.com corporation

Databank

EBeton-line

EC Exchange Inc.

englishharbour.com

Associate

Allstates Communication

Arena On-line Services Ltd.

Bellamy, Miller & Monypenny
- BMM

Catania Consulting Group, Inc.

CCT UNITED STATES, Inc.

Contemporary Marketing

Creative Edge Enterprises, Inc.

The Casino Net

Gamblers Corner

GamingMag.com

Sports and Race Book.com

Creative NetVentures

AnteUp GamblingLinks.com

Gambling Links Network

Cura Financial Services

Cyber Entertainment

/CasinoGalaxy

Ewagers.com

Gambling.com

Gamesville.com

Global Resorts SA (Pty) Ltd.

Go - Bet Inc.

Go Call, Inc.

Hall Dickler

EHCL

Electronic Card Systems

E-Lottery

Executone/Unistar

Entertainment

GalaxiWorld.com Casino Ltd.

GamblingSoftware.com

Gaming Data Solutions

Gateway Technologies

Globalvest Partners Inc.

Gold Medal Sports

Golden Palace

Goldplay Gaming Systems

Grand Virtual, Inc.

IGN - Internet Global Network

WinStreak

IGS Group

NetGame Ltd.

Casares

IBC, Ltd.

Ibill

ICN Ltd.

I Gaming Solutions

Jamaica Lottery Company
Limited

Jacques Louw, CA (SA)

Practicing Accountant
Hannelie Cillié, Risk
Management Consultant

Mohawk Internet Technologies

NetPro, Ltd.
(formerly Commercial Credit
Services)

Pinnacle Investments

Piper Marbury Rudnick &
Wolfe

RGT On-line

Audio Vegas

RGT Links

RGT Games

RGT Sports

Riptide Technologies

Casinowatch

Ruth Parasol, Consultant

Signature Card Services

SoftNetGaming, Inc.

casinoguru.com

sportsgamingguru

thetrac.com

Spielo Manufacturing
Incorporated

Inland Entertainment

Interactive Gaming &

Wagering

Inter Active Media Inc.

Global Player.com

InterContinental Casinos

Ltd.

Usa Casino

New York Casino

International Gaming

Networks

Island Internet Casino Ltd.

Island Club Casino

Lasvegasfromhome.com

Entertainment

(formerly Bronx Minerals)

MicroGaming Systems

Monte Cristo Casino

Net Entertainment

CasinoDomain.com

Net Marketing

Odds On Inc.

Orion Casino

Paradigm Processing

Solutions, Inc.

Encynk.com

PlayStar Corporation

Playwave On-line/Tropika

Fairplay African Casino

Star Games

Sterns & Weinroth

Technical Systems Testing

The Pathfinder Group, LLC

Internationale-com.com

The River City Group LLC

Interactive Gaming News

VentureTech, Inc.

Virtual Vegas Inc.

VR Services

Webstorm

Gambleup.com

Gamblingtime.com

Gamblink.com

TheWizardOfOdds.com

Whitehouse.com

WorldNet Global

Seven Palms
 SIA Sports Interaction
 Sportsinteraction.com
 Singer Communications LLC
 SkyGate Entertainment &
 Amusement
 Casino Pacific
 StarFive Inc.
 Starnet Communications
 International Inc
 Sun Casinos Limited
 Sunny Leisure Inc
 casinofortune.com
 mapau.com
 miamibeachcasino.com
 Tecnologia J.P.R.
 Grand Dominican Casino &
 Resort
 Victor Chandler International
 VIPsports
 WebPlayers Ltd.
 playersonly.com
 WWTS/Omni Casino

IGC's Code of Conduct (Posted 9 May 1997)

1. Regulatory Compliance

All IGC members will abide by the law and regulations of the jurisdiction where they propose to do business. Any IGC member issued a bona fide gaming licence from a sovereign jurisdiction shall provide evidence of that licence and will be presumed to be operating under the authority and within the scope of that licence. IGC members shall use best efforts to obtain any binding legislative or judicial

determinations that prohibit or limit operation in another jurisdiction and shall abide by those limitations to the greatest extent technically feasible.

2. Accountability

To enhance customer confidence in gaming system integrity, IGC members making their service available in a jurisdiction voluntarily agree to make their systems, algorithms and practices available for inspection and review by any legitimate gaming commission or governmental authority or to any independent testing authority recognized by the IGC, in accordance with generally accepted methods for protecting proprietary information.

3. Consumer Privacy and Data Protection

IGC members will design and operate their services to afford customers privacy and confidentiality and will post their confidentiality practices and procedures. Each IGC member will institute controls to detect and eliminate fraud and to protect data and the system from internal and external breaches.

4. Truth in Advertising

IGC members shall be truthful in all promotions and publish only accurate information about their operations. Gaming and Wagering Operator Member rules, registration procedures and payout percentages will be made available to the public.

5. Dispute Resolution and Audit Trails

In order to provide prompt and efficient dispute resolution each IGC member will retain detailed transaction records that will be archived, accessible and auditable by any legitimate gaming commission or government authority.

6. Limiting Access by Minors

IGC members will institute adequate controls to prohibit minors from accessing their gaming systems. The controls will require customers to affirm that they are of lawful age in their jurisdiction, and the IGC member shall institute reasonable measures to corroborate this information.

7. Controlling Compulsive Gambling

IGC members will implement adequate procedures to identify and curtail compulsive gambling. The procedures instituted shall include posted loss limits, and provision of referral and direct access to help and counseling organizations.

8. Banking and Transaction Processing

IGC members will conduct their banking and financial affairs in accordance with generally accepted standards of internationally recognized banking institutions. Members will follow and adhere to all jurisdictional laws pertaining to transaction reporting.

9. Prize Payouts

Interactive Gaming and Wagering Operators will ensure that there is adequate financing available to pay all current obligations and that working capital is adequate to finance ongoing operations. IGC members will pay winnings and account balances promptly on demand.

10. Corporate Citizenship

IGC members will endeavor to design and implement their services in order that they preserve and protect environmental resources, avoid depiction of violence and so that the services are user-friendly and generally accessible to the handicapped. IGC members will endeavor to support public service initiatives in harmony with the jurisdictions in which they provide their services.

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