

Thank you, Mr. Chairman and Members of the Committee, for providing me this opportunity to provide the Committee with the Department of Justice's views on Internet gambling and Indian gaming. As you know, the issues surrounding both are complex, implicating a variety of complicated legal doctrines, including issues relating to free speech, federalism, sovereignty, state rights, and comity.

Despite the complexity of these issues, the Department's views on both Internet gambling and Indian gaming are rather straightforward. We believe that much of Internet gambling is already prohibited under existing laws. To the degree that emerging technologies have made new types of gambling activities possible, the Department strongly supports Congressional efforts to amend federal gambling statutes to ensure that these new activities are prohibited. At the same time, however, it is equally important to ensure that any law prohibiting Internet gambling does not conflict with the rights or privileges of Indian tribes, both as sovereigns and under the Indian Gaming Regulatory Act (IGRA).

I. Internet Gambling

Internet gambling has proliferated in recent years. It is estimated that between 1997 and 1998, Internet gambling more than doubled, from 6.9 million to 14.5 million gamblers, with revenues doubling from \$300 million to \$651 million. This proliferation is troubling for three reasons.

First, since the Internet allows virtually instantaneous and anonymous communication that is difficult to trace to a particular individual or organization, the potential for operators of Internet gambling sites to successfully defraud their customers is significantly greater than with traditional casino-style gambling. Fraudulent activities could range from credit card fraud to the manipulation of gambling odds. In addition, the anonymity allowed by the Internet also makes the medium attractive to organized crime, since it is difficult for law enforcement to detect and prevent crimes being committed by unknown and untraceable persons.

Second, because the Internet provides people with virtually unfettered access to the opportunity to gamble at any time and from any place, Internet gaming presents a greater danger for compulsive gambling and severe financial consequences for the player.

Last, because the Internet is both anonymous and widely available, it is much more difficult to prevent minors from gambling. Currently, gambling businesses have no reliable way of confirming that gamblers are not minors who have gained access to a credit card and are gambling on their web sites.

While the Department of Justice supports a prohibition on Internet gambling, we believe that any legislation making gambling activities on the Internet illegal should have three important characteristics. First, such legislation should treat physical world activity

and cyberactivity in the same way. If activity is prohibited in the physical world but not on the Internet, the Internet will become a safe haven for that criminal activity. On the other hand, it is hard to explain why conduct previously deemed acceptable in the physical world should suddenly become criminal when carried out in cyberspace. Therefore, we strongly recommend that the legislative treatment of Internet gambling be consistent with existing federal law. The most effective approach to ensuring such consistency, we believe, is to address Internet gambling and gambling over other media by the same set of federal statutes, rather than by enacting a separate provision covering only Internet gambling.

Second, any effort to distinguish Internet transmission from other methods of communication is likely to create artificial and unworkable distinctions. For example, with the expected growth of digital Internet telephony -- the use of the Internet or other packet-switched networks for pure voice communications -- any effort to distinguish wagers placed via voice communications from wagers placed via electronic communications will lead to substantial confusion.

This leads to my third point, which is that any legislation should strive to be technology neutral. Legislation that is tied to a particular technology may quickly become obsolete and require further amendment. As a result, we believe it prudent to identify the conduct we are trying to prohibit, and then prohibit that conduct in technology-neutral terms. Often times, this can be most efficiently accomplished by amending existing laws, as opposed to creating a new technology-specific statutory scheme.

That being said, 18 U.S.C. § 1084 -- the Wire Communications Act -- currently prohibits someone in the business of betting and wagering from using a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers on any sporting event or contest. This law was originally enacted to assist the states and territories in enforcing their laws and to suppress organized crime involvement with gambling. The Department believes that many forms of Internet gambling can be effectively prosecuted under the Wire Communication Act and other federal and state laws. Because most methods of connecting to the Internet involve the use of "wire communication facilities," anyone in the business of betting or wagering who transmits or receives bets and wagers on sporting events via the Internet is acting in violation of the Wire Communications Act. To the extent that Internet casinos are likely to be located abroad and beyond the easy reach of state authorities, the states are likely to seek federal assistance more frequently when foreign casinos offer gaming to local citizens in violation of local law. Assisting states through enforcement of the Wire Communications Act, therefore, is fully consistent with the Department's law enforcement priorities.

Indeed, the Department already has prosecuted Internet gambling businesses under the Wire Communications Act. For example, in March 1998, the United States Attorney's Office for the Southern District of New York charged 22 defendants via criminal complaints with conspiracy, pursuant to 18 U.S.C. § 371, to violate Section 1084 and Section 1084 violations for the operation of on-line gambling sites. The websites involved in this prosecution were operated in countries in the Carribean and South America, including

the Dominican Republic, Curacao, and Antigua. As of today, nine defendants have pled guilty; six to criminal informations alleging conspiracy to violate Section 1084 and three to criminal informations alleging misdemeanors.

Despite these successes, however, the Department also recognizes that the advent of Internet gambling may have diminished the overall effectiveness of the Wire Communications Act, in part, because that statute may relate only to sports betting and not to the type of real-time interactive gambling (e.g., poker) that the Internet now makes possible. Therefore, the Department generally supports the idea of amending the federal gambling statutes by clarifying that the Wire Communications Act applies to interactive casino betting and that the Act covers all Internet use, even if Internet transmissions use modern technology -- such as satellite communications -- that may not be included in the traditional definition of "wire communications."

II. Indian Gaming and the Internet

We also believe that the interrelationship between the Internet and Indian gaming authorized by IGRA must be examined in any legislation prohibiting Internet gambling. Since the formation of the Union, the United States has recognized Indian tribes as

"domestic dependent nations" that exercise governmental authority over their members and their territory. In numerous treaties and agreements, our Nation has guaranteed the right of Indian tribes to self-government, and pledged to protect Indian tribes. The Administration and the Attorney General respect and honor our Nation's commitments to Indian tribes.

Under the longstanding Federal Indian Self-Determination Policy, IGRA was enacted to promote "tribal economic development, self-sufficiency, and strong tribal governments" and to protect Indian tribes and the public from corrupt influences. IGRA has successfully promoted tribal economic development in many areas, and Indian tribes are strengthening their insitutions of self-government. Indian tribes use the governmental revenue derived from gaming for governmental purposes, such as roads, water systems, schools, hospitals and law enforcement, among other things.

The Department of Justice has significant law enforcement responsibilities in Indian country, and as we have stated in earlier testimony to this Committee, in the absence of adequate regulatory oversight, large scale gaming is subject to targeting by corrupt influences. Although the Department is not a gaming regulator, the Department is keenly interested in seeing the IGRA's regulatory system work well because the Department has complementary law enforcement authority under IGRA.

In addition, consistent with the principle of government-to-government relations

and the Federal trust responsibility, the Department has pledged to support tribal self-government and to assist Indian tribes in the development of tribal law enforcement, tribal courts, and traditional justice systems. An effective gaming regulatory system, including minimum federal standards, is essential to protect Indian gaming and the tribal governmental infrastructure and economic development attendant to it.

The Constitution vests the United States with authority over relations with Indian tribes. Absent a delegation of authority to the states, federal law governs Indian commerce. IGRA "extends to the states a power withheld from the states by the Constitution," including opportunities to negotiate regulatory standards and regulatory roles related to class III Indian gaming. Seminole Tribe v. Florida, 116 S. Ct. 1114, 1124 (1996).

IGRA provides that Indian tribes should negotiate with states to conclude Tribal-State compacts to regulate the operation of class III gaming on Indian lands, which are subject to the approval of the Secretary of the Interior. IGRA also provides that the states shall negotiate in "good faith" with the tribes, and that the tribes may sue the states for a failure to do so. The remedy in such circumstances is mediation supervised by the federal courts. In Seminole Tribe v. Florida, the Supreme Court held that the Commerce Clause did not empower the Congress to abrogate the state sovereign immunity embodied in the Eleventh Amendment. When a state raises the Eleventh Amendment as a defense against a suit brought by an Indian tribe under IGRA, the suit is barred. Thus, Seminole has invalidated a step in IGRA's Tribal-State compacting process. In our view, Congress

should provide a legislative solution to this Eleventh Amendment problem.

In reviewing Senator Kyl's bill, introduced in the Senate as S. 692, the Department of Justice is concerned about its silence on Indian gaming on the Internet, especially in light of both its inclusion of exceptions for parimutuel wagering, state lotteries, and fantasy sports leagues and contests and IGRA's allowance of some electronic coordination between gaming facilities conducted entirely on Indian lands.

Of course, to the extent that Indian Tribes seek to offer gaming to citizens of various states, where such gaming does not take place solely on Indian lands and is not authorized under state law, there is no compelling reason to exempt Indian Tribes from the otherwise generally applicable provisions of the legislation for such off-reservation gambling.

I want to thank the Committee again for asking me to present the Department's views on the Internet and Indian gaming issues. I would now be pleased to answer any questions you may have.