

Table of Contents



Part 1

Introduction.....	1
--------------------------	----------

Chapter 1

What Is the Internet?	3
------------------------------------	----------

Anthony Cabot.....	3
---------------------------	----------

Analog Telephones in the Digital Age.....	4
---	---

Transmission of Data.....	5
---------------------------	---

Routing Of Data.....	7
----------------------	---

Chapter 2

What Is Gambling?	9
--------------------------------	----------

A Basic Definition.....	10
-------------------------	----

Prize	11
-------------	----

Chance	11
--------------	----

Predominance Test.....	12
------------------------	----

Gambling Instinct Test.....	12
-----------------------------	----

All Wagers Are Illegal.....	13
-----------------------------	----

Chance in the World of Computer Games.....	14
--	----

Consideration.....	15
--------------------	----

'Intrinsic Value' Test.....	16
-----------------------------	----

Free Entry as Eliminating Consideration	16
---	----

Fees for Internet Access	17
--------------------------------	----

Game Points as Consideration.....	17
-----------------------------------	----

Flexible Entry as Eliminating Consideration	17
---	----

The Dangers of Flexible-Entry Contests.....	19
---	----

Chapter 3

Challenges for Internet Gambling	21
---	-----------

The Challenges Facing Electronic Transfer of Funds.....	22
---	----

Fund Transfer Systems	24
-----------------------------	----

The Changing Landscape	24
------------------------------	----

Internet Gambling Must Be Secure From Hackers	25
---	----

Internet Gambling Must Overcome Integrity Issues.....	25
---	----

Internet Gambling Faces an Uncertain Legal Future.....	27
--	----

Chapter 4

Traditional Versus Internet Gambling.....	29
--	-----------

Casinos.....	29
--------------	----

Accessibility.....	30
--------------------	----

Amenities/Ambiance.....	30
-------------------------	----

Trust.....	31
------------	----

Lotteries	32
Quality of Play	32
Accessibility	33
Trust	33
Value	34
Race And Sports Books	34
Race Wagering	34
Sports Wagering	36

Part II

Business Perspectives.....	39
-----------------------------------	-----------

Chapter 5

IP Considerations	41
--------------------------------	-----------

What Is Intellectual Property?	42
--------------------------------------	----

Copyrights	42
------------------	----

Literary, Artistic and Musical Copyrights	43
---	----

Moral Rights	44
--------------------	----

Patents and Inventions	45
------------------------------	----

Trademarks/Logos	46
------------------------	----

Where from Here?	48
------------------------	----

Chapter 6

Age Verification	49
-------------------------------	-----------

Overview of Business and Legal Risks	50
--	----

Common Forms of Age Verification	50
--	----

Use of Government-Issued ID Database for Age Verification	50
---	----

Pseudo-Verification Based on Presentation of a Credit or Debit Card	52
---	----

Comparing a Web Site Visitor's Personal Information with Consumer Database or Credit Report	53
--	----

UK Age Verification Legislation Concerning Online Gambling	54
--	----

Selecting an Age Verification Service Provider	57
--	----

Chapter 7

Data Sharing	59
---------------------------	-----------

Why is Data Sharing Important?	60
--------------------------------------	----

The Benefits of Data Sharing	60
------------------------------------	----

Reduced Fraud Rate	60
--------------------------	----

Reduce False Positives	61
------------------------------	----

Reduced Manual Review Costs	61
-----------------------------------	----

Improved Decision Making	61
--------------------------------	----

Improved Customer Experience	61
------------------------------------	----

Where from Here?	62
------------------------	----

Part III**Legal, Regulatory, and Policy Issues 63****Chapter 8****Why Internet Gambling May Frustrate Public Policy..... 65**

Eradication..... 66

Decriminalization 69

Gambler Protection Model..... 69

Government Neutral Model..... 72

Government Protection Model..... 73

Chapter 9**Prohibitory Challenges 77**

Policing Operators 79

Policing Home Users 79

Policing Internet Service Providers..... 82

Policing Index Providers and Advertisers 85

Policing Financial Transaction Providers..... 86

Chapter 10**Regulatory Challenges..... 89**

What Are the Goals of Effective Regulation? 91

Government Protection 91

Industry Promotion and Protection 91

Player Protection..... 92

What Are the Important Legislative Functions? 93

What Are the Elements of an Effective Regulatory System?..... 93

Enforcement..... 94

Investigation and Licensing 95

Audit and Accounting 97

Judicial Oversight..... 100

Other Agency Functions..... 101

Technical Requirements..... 101

Player Accounts 114

Other Requirements..... 116

Chapter 11**The New Playing Field..... 127**

The Techno-Legal Loop..... 128

The Phenomenon of Digital Convergence..... 129

Gambling and Convergence - All Games the Same? 129

Convergence and Hybridization..... 131

Lotteries 132

Electronic Game Cards 132

Skill Game Crossovers..... 133

Wire-Line..... 134

Cell (Mobile) Phones..... 136

Wi-Fi.....	136
Cable.....	136
Interactive TV.....	137
Satellite Communications.....	137
Broadband	137
Inter-Effects of Legalization and Regulation - A Look at Future Scenarios.....	138
Future Policy Considerations: Net Neutrality and the Open Internet	139
Internet 2.0, Fast Lane, and Fees	140
The Google Auction and Phone Browsers - Fortunate Prospects for the Future	141
Where from Here?	142

Chapter 12

International Law	143
The Antigua/US Dispute	146
The US Position	147
Failure to Make a Prima Facie Case	147
No US GATS Commitment on Gambling and Betting Services	147
US Measures not Inconsistent with GATS Obligations	148
Article XVI – Market Access	148
Article XVII – National Treatment	149
Articles VI and XI.....	150
Article XIV	150
WTO Dispute Resolution	150
The Dispute Resolution Panel Report.....	150
The Appellate Body Report	153
Implementation of the Appellate Body Report.....	154
The Unlawful Internet Gambling Enforcement Act of 2006	155
The Compliance Panel Report	157
The Compensation Report and Withdrawal Negotiations.....	158

Part IV

Global Policies and Perspectives.....	161
--	------------

Chapter 13

US Policy	163
Preliminary Groundwork	165
§5361. Congressional Findings and Purpose	165
No Other Gambling Laws Affected by <i>UIGEA</i>	165
2.3 §5362. Definitions	166
'Bet or Wager'.....	166
Exclusions from Definition of 'Bet or Wager'	168
'Business of Betting or Wagering'.....	170
'Designated Payment System'.....	170
'Financial Transaction Provider'	171
'Interactive Computer Service'.....	171
'Restricted Transaction'	172
'Financial Institution'	172
'Unlawful Internet Gambling'	172
Additional Terms	173
Intrastate and Intratribal Exemptions	173

Requirements for Authorized Intrastate and Intratribal Gambling..... 174
 Does the *UIGEA* Permit States/Tribes to Regulate Internet Gambling?..... 175
 Interstate Horseracing Exemption 176
 Intermediate Routing 176
 § 5363 Prohibition on Acceptance of Any Financial Instrument for Unlawful
 Internet Gambling 177
 § 5364 Policies and Procedures to Identify and Prevent Restricted Transactions
 178
 Requirements for Policies and Procedures 179
 Exemption for Certain Restricted Transactions 180
 Compliance, Freedom from Liability, and Enforcement..... 183
 § 5365 Civil Remedies..... 184
 Proceedings 184
 Limitation for Internet Service Providers..... 186
 §5366. Criminal Penalties..... 187
 §5367 Circumventions Prevented..... 188
 SEC. 803. Internet Gambling in or through Foreign Jurisdictions..... 188
 Regulatory Options 189
 The Frank Bills 189
 McDermott's Tax Bills..... 193
 The Study Commission Bill 193
 Concerning the *Wire Act* 194
 Poker Exemption..... 194
 State-Based Gaming..... 195

Chapter 14

The United States - A Series of Unintended Events 197
 US Constitutional Underpinnings..... 198
 Local Gambling Law and Technology..... 198
 The *Wire Act* and other Extensions of State Law 199
 American Gambling Renaissance Creates a Mass Market 200
 Backlash 201
 The Statutory Gap and the Jurisdiction Question 203
 Congressional Prohibition Efforts Progressively Weaken..... 205
 UIGEA: a Series of Unfortunate Legislative Events..... 207
 Stairway to the States..... 209
 Side Effects..... 209

Chapter 15

US Case Law 213
 Federal Case Law - Criminal Cases 214
 United States v. Ross..... 214
 United States v. Cohen 217
Sterling Suffolk Racecourse Ltd. Partnership v. Burrillville Racing Ass'n, Inc. 220
 US v. Bala 221
 US v. D'Ambrosia..... 222
 United States v. Tedeschi, et al..... 224
 Complainant, v. Bruce J. Meagher, Respondent. 669 N.W.2d 733 (2003)..... 224

US v. BetonSports.....	225
US v. Neteller	229
Federal Case Law - Civil Cases.....	230
Racketeer Influenced and Corrupt Organizations Act	231
Jubelirer v. MasterCard Int'l.	232
In re MasterCard Int'l Inc.	233
Fifth Circuit Appeal of In re MasterCard Int'l Inc.	235
Jurisdiction: Uebler v. Boss Media, AB	237
Interactive Media Entertainment & Gaming Association, Inc. v US Attorney General et al.	238
Trademark and Cybersquatting.....	241
Rio Properties, Inc., v. Rio International Interlink	241
Int'l Bancorp, LLC v. Societe Des Bains De Mer Et Du Cercle Des Etrangers a Monaco	242
PATENT	242
United States v. \$734,578.82	242
1 st Technology LLC v. Bodog Entertainment Group S.A., Bodog.net and Bodog.com	243
Home Gambling Network, Inc. v Betinternet.com.....	245
State Case Law.....	246
Betcha.com v. Washington State Gambling Commission	246
Rouso v. State of Washington	248
State by Humphrey v. Granite Gate Resorts	249
People v. World Interactive Gaming Corp.	250
MDS Investments, LLC v. State of Idaho, 138 Idaho 456 (2003).	252
State of North Dakota v. Trauman.....	256
Conclusion	256

Chapter 16

Advertising and US Law.....	257
Historical Regulation of Gambling Advertising	260
Traditional Federal Regulations of Gambling Promotion.....	261
Current Federal Gambling Advertising Regulations.....	261
The Broadcast Ban	261
The Legal Test	262
Challenges to the Federal Broadcast Ban.....	265
Liquor Ads Produce a Change	265
Modern Court Decisions.....	266
Aiding & Abetting/Conspiracy.....	268
Free Speech Defenses	273
The Casino City Case	274
Play-for-Free Advertising	276
Conclusion	276
Advertising Risk Factors	277
The Medium, Means, and Relationship Used to Disseminate the Commercial Message	277
Type of Gambling Advertised.....	278
Deceptive or Unfair Advertising.....	279
Target Audience.....	280
The Potential Applicability of the Target Jurisdiction's Laws	281
Practical and Political Realities	282
Conclusion	283

Chapter 17

Canada	285
Criminal Code of Canada	286
Skill Gaming.....	287
Jurisdiction.....	288
Advertising and Marketing Online Gaming and the <i>Canadian Criminal Code</i>	292
Offenses under the Code	292
Advertising of Instructional, 'Freeroll' Web sites	294
Advertising of Poker and Other Games of Mixed Skill and Chance	295
Advertising Online Sports Books.....	295
Affiliate Marketing.....	296
Practical Considerations on Marketing I-Gaming to Canadian Residents	297
Freedom of Expression as a Defense to Charges of Advertising Gaming & Betting	297
Ontario - Section 13.1 of the <i>Consumer Protection Act, 2002</i>	298
The Mohawks of Kahnawáke.....	300
Absolute Poker and UltimateBet Scandals.....	301
White List Rejection.....	303
Enforcement of the Code against I-Gaming: <i>Starnet and Cyber World Group</i>	303
Starnet Communications	303
Cyber World Group	304
Recent Legislative Developments: Bill C-13.....	306
Proceedings before the Senate Committee - November 21 and 27, 2007	308
PartyGaming PLC Appears before the Senate Committee	309
Interests Motivating Clause 5 of the Bill	311
The Specter of a Canadian 'UIGEA'	312
I-Gaming Conducted and Managed by the Provincial Governments, and the <i>Earth Future Lottery Reference Case</i>	314
Where from Here?	317

Chapter 18

Latin America.....	319
Mexico	320
Argentina	323
Chile	324
Uruguay	324
Brazil.....	325

Chapter 19

Mexico	329
---------------------	------------

Chapter 20

EU Policy and Processes.....	335
The European judicial system.....	336
The Preliminary Reference Procedure	337
Infringement Action Brought by the European Commission	338
The European Decision-Making Process	339
The Three Main Decision-Making Institutions	339
EU Decision Processes.....	342
The Treaty of Nice and the Constitutional Treaty: Shaping the Future of the EU.....	344

Chapter 21

Europe and Cross-Border Challenges	347
The Electronic Commerce Directive.....	348
The Services Directive	349
Study on Gambling Services in the Internal Market.....	352
Case Law	354
The Infringement Cases.....	361
The Concept of Establishment.....	363
VAT on Gambling Services - An Unfinished Debate.....	365
Competition Law and Gambling Services	367
The Trade Barriers Regulation Action.....	370

Chapter 22

The United Kingdom.....	371
Background.....	372
Contractual and jurisdictional issues.....	373
The Gambling Act 2005	374
Operating Licenses	377
Ongoing Regulation	378
Personal Licenses.....	382
Fees	383
Appeals	387
Advertising and Marketing.....	387
Betting Exchanges	388
International Effect	389
Underage Players and Player Verification	389
Taxation	390
Where from Here?	390

Chapter 23

France.....	391
The market Opening Model Proposed by the Government.....	391
Horserace Betting	392
Sports Betting.....	392
Casino games	392
Taxation	393
Creation of Regulatory Body	393
Mutual /Conditional Recognition.....	393
Timetable	393
Criminal Liability of Remote Gaming Operators.....	394
Games of Chance	394
Lotteries	397
Bill on the Prevention of Delinquency.....	398
Liability of Intermediary of Affiliated Service Providers	399
ECJ Case Law	402
National Case Law on Gambling	404
Infringement Proceedings	406
International Aspects - French Jurisprudence on Internet Cases	407
Where from Here?	411

Chapter 24

Belgium	413
Games of Chance and Casino Games - Act of 1999.....	414
Reform of the 1999 Act on Games of Chance.....	416
Lotteries: The 2002 National Lottery Act	417
National Case Law.....	422
Commercial Court of Liège, April 23, 2007.....	422
Liège First instance court, April 28, 2008	424
Where from here?.....	424

Chapter 25

The Netherlands	427
Gambling in the Netherlands	428
The Regulation of Gambling in the Netherlands.....	429
A Threatened Position?.....	431
Infringement Proceedings.....	431
New Dutch Policies regarding the Offering of Internet Gambling	433
History of Online Gaming Regulation	433
Critique on the OGA.....	435
The Gaming Tax Act and Critique on that Act.....	437
The Draft for a New Gaming Act	438
Follow-the-Money Approach: Payment Blocking?.....	439
Internet Gambling Case Law	442
De Lotto vs. Ladbrokes Proceedings.....	443
Summary Proceedings	443
Main Proceedings	444
Betfair Civil Proceedings.....	446
The Grounds of the Betfair Summary Appeal Case and in the Main Proceedings	447
The Casino License Allocation: Compagnie Financiere Regionale	450
The Judgment by the Administrative Court of Breda.....	450
Appeal Proceedings before the Council of State.....	452
Analysis.....	453
Allocation of Charity Lottery License: Schindler	453
Betfair Administrative Proceedings.....	455
Conclusion	457

Chapter 26

Germany	459
Policy Concerns.....	462
The Legal Basis for Gambling Law in Germany	464
Applicability of German Law.....	464
Federal Gambling Provisions	465
State Gambling Provisions.....	472
Poker and the Law.....	474
Live Poker Tournaments	475
Online Poker	476
Potential Problems for Free-to-Play Poker	477
Recent Case Law	477

Court Descisions, 2003-2005	478
Landmark Decision by the Federal Constitutional Court	480
Decisions by Administrative Courts in the Transitional Period, 2006-2007	481
Recent Court Decisions	482
Anti-Trust Proceedings against Deutscher Lotto- und Totoblock	485
Trademark Cases.....	487
Where from Here?.....	487

Chapter 27

Sweden	489
The Regulatory Framework	490
The Lottery Act.....	492
Lotteries	493
Promotion of a Foreign Lottery.....	494
Case Law on Gambling Services.....	495
Recent Developments.....	498
Where from Here?	500

Chapter 28

Denmark	501
Danish Legislation and the Monopoly License.....	501
Internet Gambling	503
Poker.....	504
Where from Here?	505

Chapter 29

Spain.....	507
Legal Background	508
A General Overview	508
Advertising of Gambling Activities	510
Sanctions Derived from the Infringement of Spanish Gambling Law	512
Legal Challenges Posed by Internet Gambling in Spain.....	516
Internet Gambling in Spain Today.....	516
The Legal Regime for Internet Gambling Activities	518
The Legal Regime for Advertising Internet Gambling Activities	519
Legal Initiatives Adopted in Connection with Internet Gambling	520
Legal Initiatives Adopted by the Autonomous Communities	523

Chapter 30

Italy	529
Gambling in Italy: Today's Regulatory Framework	529
The Blackout Decree of 2007	531
An Anomaly: The 'Punti Telematici'.....	533
The Challenges Ahead	533
Recent Developments (2007-2008)	535
Games of Skill.....	535
Liberalization of Gambling Policy	536

Chapter 31

The Isle of Man.....	537
Background.....	538
Telecommunications and Bandwidth.....	539
The Online Gambling Legislation.....	540
Allowed Forms of Online Gambling.....	540
Taxation.....	540
Tax Rates for Companies.....	541
Tax Rates for Individuals.....	541
Individual Tax Cap.....	541
Value Added Tax.....	542
Online Gambling Duty.....	542
Application Fee and Licence Fee.....	543
Financial Assistance Scheme.....	543
The Application Procedure.....	544
Designated Official.....	546
Regulations.....	546
Registration and Accounts Regulations.....	546
Gambling with Credit.....	547
The Business Participant.....	547
Rules for Players' Accounts.....	547
Advertising and Marketing of Online Gambling.....	547
System Verification.....	549
Certification Procedure for Gambling that Utilizes a Random Number Generato.....	550
Certification Procedure for Betting.....	550
Disaster Recovery.....	550
Anti-Money Laundering.....	551
Identification Procedures.....	552
Record-Keeping Procedures.....	552
The License.....	553
The Four Eyes Approach.....	553
Legal Jurisdictions.....	554
Problem Gambling Fund.....	554
The Gambling (Amendment) Act 2006.....	555
Isle of Man Gambling Control Commissioners.....	555
Gambling Appeals Tribunal.....	556
Off-Island Designated Official.....	556

Chapter 32

Alderney.....	559
Regulatory Framework.....	561
Whitelisting to permit advertising in the UK.....	561
Provisions of the E-Gambling Legislation.....	562
The AGCC's Approach Toward Regulating.....	E-Gambling 564
How It Works.....	565
Licensing and Certification.....	565
Lawful Exercise of E-Gambling License.....	567
Ongoing Compliance Inspections.....	570
Where from Here?.....	571

Chapter 33

Malta	573
A Timeline of Gambling Regulation	574
The Competent Authority for Internet Gaming	575
Corporate Vehicle for a Remote Gaming Operation	575
Licenses and Licencing Procedures	576
Types of Licenses and Period of Validity	576
Licensing Procedures.....	577
Certification of the Gaming System.....	578
Gaming License Fees	578
Salient Regulatory Requirements For Carrying Remote Gaming Operations..	579
Location of the Online Gaming and Control System	579
No Statutory Restriction on Offering Services in Specific Jurisdictions	579
Licensing of Employees	580
Rules Regarding Player Protection	580
Anti-Money Laundering Provisions.....	581
Post-Licensing Compliance.....	581
Taxation of betting operations.....	582
Gaming Tax	582
Corporate Tax.....	583
Notable Case Law.....	583
Where from Here?	584

Chapter 34

The Åland Islands	585
Economic Overview	586
Current Legislation Covering Gambling	586
Lottery Legislation.....	586
The Right to Practice a Trade	587
Proposed Changes to Current Gambling Legislation.....	588
Potential Licensees	588
The Scope of the Licensing System.....	589
Selection Procedure and Criteria for Obtaining a License.....	590
License Fees and Gaming Taxes.....	591
Legal Issues of Special Relevance to Internet Gambling.....	591
The PAF Case.....	592
Two Interpretations of the Supreme Court's Judgment in the PAF Case.....	593
Questions of EC Law Indicating that Marketing Cannot Be Considered to Form Part of the Organization of a Lottery	594
Where from Here?	595

Chapter 35

Australia	597
Australian Legislative Framework – Federal Internet Gambling Legislation	599
Prohibitions	599
Exclusions from Prohibitions	600
Defense of Reasonable Diligence by Interactive Gambling Service Providers	601
Advertising	602
Regulations Relating to Unenforceability of Agreements	602
Designated Countries.....	603

Internet Industry Code of Practice	604
Review of the Interactive Gambling Act 2001	605
Jurisdictional Issues.....	606
Australian Legislative Framework – State and Territory Internet Gambling	
Legislation	606
Australian Capital Territory, Queensland, and Victoria	607
Northern Territory	608
Tasmania	609
New South Wales, South Australia, and Western Australia	609
Norfolk Island	610
Bookmakers, TABs, and Exclusivity	610
Betting Exchanges.....	610
Operation Restrictions	611
Problem Gambling.....	612
Integrity	613
Taxation	613
Cross-Border Restrictions and the Betfair Case.....	614
Legal Challenges	614
Race Fields.....	616
Legislative Protection	616
Challenges	618
The Future.....	618
Sports Fixture Information	619
Conclusion	621
Where From Here?	622
Chapter 36	
New Zealand.....	623
Gambling Act 2003 History	626
Gaming Reform in New Zealand	627
The New Zealand Racing Board.....	629
The Racing Act 2003	630
New Zealand Lotteries Commission	632
Prior to the Gambling Act 2003.....	634
Chapter 37	
South Africa	637
Preliminary Developments (1999 - 2004)	638
Interim Prohibition and the Development of National Policy (2004 - 2006)	639
The National Gambling Amendment Bill 2007	640
Where from Here?	647
Chapter 38	
The Far East.....	649
China	650
Internet Gambling.....	651
Cultural Exceptions	652
Targeting the Market	653

Localization of the Product.....654
Payment Methods654
Future Developments.....655
Hong Kong SAR.....656
Macau SAR.....657
Future Developments.....658
The Philippines658
Cagayan Special Economic Zone & Freeport.....659
Malaysia660
South Korea661
Regional Round-up661
Where from Here?663

Index665