

Click to Win: The Risks and Rewards of Pay-to-Play Digital Games of Skill or Chance

By Jimmy Nguyen and Sean M. Sullivan

It is hard to go on Facebook these days without seeing your friends tout their latest record point total on Bejeweled Blitz or their bountiful crop harvest on Farmville. With the rise of social media, casual games have added to the overall growth of online videogames. These games have also progressively moved to smartphones, mobile devices, and now to slate computers like Apple's iPad. Who knew that a mobile game about Angry Birds could inspire devoted play and colorful Halloween costumes?

Casual gamers play mostly for pride, but there is a growing trend towards applications (some of which require money or other consideration from entrants) that award players money or prizes. Text-to-win mobile phone sweepstakes are already common. The Virgin Group now even operates an Internet videogame tournament business, which allows gamers to win cash prizes by beating other players in videogames. What if a big leap further was taken one day so that users could wager and win money in this world of digital games? Imagine taking bets on whether you can beat someone else or the computer in a test of online Scrabble. Or picture virtual currency from casual games like Farmville being earned and cashed into real dollars. The possibilities are endless, leading many game developers to see big future dollar signs from pay-to-play games on digital platforms.

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In certain foreign regions where Internet gambling is legalized, this new breed of digital gaming is already becoming big business. In the United States, however, few companies are talking about it publicly, in large part because the US regulatory environment is currently hostile to online gambling.

There has been some talk (such as by Congressman Barney Frank) about enacting legislation to regulate Internet gambling in the United States. While this does not appear likely to happen any time soon, it is not far-fetched to think that business pressures might open the US market to pay-to-play games for online environments and mobile devices. In particular, there is an important distinction between games of chance (such as casino- and lotto-type games) and games of skill (word games such as Web-Boggle). Whereas pay-to-play games of chance would currently be considered illegal lotteries or gambling in the United States, some observers would argue that wager-based games of skill could be permissible. Consequently, game developers may seek to push the envelope with digital games of skill that take some consideration from players to award prizes and even monetary winnings in return.

Whether the US regulatory scheme would or should ever open its arms to wager-based digital gaming are questions for another day. But given the growing foreign importance and a possible US future for such electronic amusement, lawyers and business executives in the gaming, new media, technology, and intellectual property arenas should be aware of this emerging trend. This article will summarize lottery, sweepstakes, and contest laws that come into play; the state of Internet gambling regulation in the United States; trends in digital games of chance and skill given the US legal environment; and other legal issues raised by these forms of entertainment technology, which will grow as more companies encourage consumers to "click to win."

Lottery, Gambling, Contest, and Sweepstakes Laws

Let's begin by understanding the demarcations between skill and chance and pay-for-play versus free participation. These differences affect how the law treats games of chance (e.g., lotteries), those of skill (e.g., console

gaming and contests), and those that are free to enter (e.g., most sweepstakes).

Lotteries in the United States are exclusively government run, where permitted. Many states prohibit them outright. A lottery is generally defined as having three key determinative elements: (1) a prize is awarded; (2) chance determines the prizewinner; and (3) mandatory consideration from players to enter. To ensure that what is being offered is not a lottery, one of the three elements must be removed.

Gambling is generally defined as consideration exchanged for a chance to win something of greater value. Consideration (the “pay” in pay-to-play) can come in many forms other than an actual money wager. It could also be requiring players to purchase a product, to incur SMS text or 900 number phone charges or service fees, or to engage in activities that require substantial time or effort. To avoid lottery and gambling prohibitions, many operators structure their games or promotions as a contest or a sweepstakes that meets the legal requirements of each state in which residents are eligible to enter.

Taking games onto digital platforms implicates not only laws about traditional sweepstakes, contests, and lotteries but also the regulatory frontier for Internet gambling.

A contest awards a prize but replaces the element of chance by selecting the winner based on skill or intellect. Some (but not all) states may require consideration from entrants. But nothing that would be outcome determinative can be left to chance. For example, a random drawing cannot be used to break a tie in a skill-based contest without potentially converting the promotion into a sweepstakes or lottery. States take different approaches with respect to how contests can deal with the element of chance.

A sweepstakes is a game or promotion that awards a prize based on chance, but which lacks the element of consideration. In the past, most states have generally exempted prize-giving activities that have an alternative free method of entry (AMOE)—also known as “flexible participation”—from criminal prohibitions, because no reason exists to be excessively protectionist if players do not have to exchange consideration for participation. This is where the ubiquitous “No Purchase Necessary” phrase in marketing originates.¹

Where an AMOE is permitted, it must be clearly disclosed, universally available, and equal in dignity to

the entries that included consideration. Even then, some pay-to-play prohibitions may affect the way in which a sweepstakes can be structured. For example, mobile text message sweepstakes present a unique challenge because some states have gambling or lottery statutes, Attorney General opinions, or case law that prohibit requiring entrants to pay-to-play. In those states, an AMOE may not be enough to make the activity legal if the entrants that have paid consideration in the form of a premium text message charge do not receive something of value for their payment.

State of Internet Gambling Regulation in the United States

Taking games onto digital platforms implicates not only laws about traditional sweepstakes, contests, and lotteries but also the regulatory frontier for Internet gambling. Internet gambling Web sites have operated for some time and generate significant revenue. They focus heavily on online poker and casino games (and some go beyond pure gaming to take sports bets). But US law about online gambling has been and continues to be uncertain.² Federal law *directly* addresses only online *sports betting*, leaving it up to individual states to define the types of online betting and wagering prohibited under other statutes. Also, while Internet gambling may be outlawed by some states (including Illinois, Indiana, Louisiana, Massachusetts, Nevada, Oregon, South Dakota, and Utah), other states have outdated statutes that pre-date the emergence of the Internet or that are ambiguous when it comes to online gaming.³

Because of the legal uncertainty in the United States, Internet gaming operators are typically licensed in and operate in foreign locations. Some operators continue to take (and some would argue, solicit) bets from US customers.⁴ They have also tried safer measures, such as offering a Web site that provides poker and other casino gaming for free, with links to true pay-for-play gambling sites. But the approach does not altogether eliminate risk. At least one site (WagerNet) that took this approach was sued by the Minnesota Attorney General’s Office, although in that instance there were promotions and enticements on the sanitized Web site to go to the linked site for gambling purposes.⁵

Before 2006, the Federal Wire Act of 1966⁶ was one of the most widely used federal statutes to attack interstate gambling. The Wire Act was originally aimed at combating organized crime and is therefore not particularly current for the digital era and has important limitations. Most notably, the Wire Act applies to bets or wagers placed on “any sporting event or contest;” it

has not yet been expressly held to reach beyond sports betting.⁷ Furthermore, the Wire Act has historically been applied to sports betting operations conducted by telephone or wire (*i.e.*, telegraph). While the Wire Act has been used to prosecute cases in the online gambling sector, no court has yet issued any published decision applying the Wire Act to online skills or chance-based gaming.⁸

In 2006, following the high-profile arrests of several online gambling executives traveling in the United States, Congress enacted the Unlawful Internet Gambling Enforcement Act (UIGEA).⁹ The bill was passed only after being attached to completely unrelated legislation (the Safe Port Act) and signed into law as one of the Bush Administration's last acts. UIGEA creates federal liability for the violation of a state, tribal, or federal law outlawing gambling when such violation is conducted over the Internet. UIGEA targets payment processors, making it illegal for financial institutions to process illegal transactions originating from or directed toward any online gambling operator. These payment processors are required to establish policies and procedures designed to identify and block or prohibit transactions in connection with unlawful Internet gambling.

There are important limitations on UIGEA that narrow what at first glance appear to be broad restrictions on Internet gambling. First, UIGEA requires the violation of an underlying federal, state, or tribal law. As described above, while some states more expressly outlaw online gambling, other states are less clear in their statutes. Second, it is not clear that UIGEA applies to all games of skill that involve contests in which the person making the bet or wager is also a participant in the game. Third, the regulations apply only to US companies or to "U.S. offices of participants in designated payment systems."

UIGEA has faced attacks from within the United States and from countries that do business with the United States. Rep. Barney Frank (D-Mass.) has been one of the most active political leaders in proposing legislation aimed at legalizing Internet gambling. In 2007, he proposed the Internet Gambling Regulation and Enforcement Act¹⁰ and in 2008 the Payment System Protection Acts.¹¹ Both bills sought to amend UIGEA and relieve the logistical strain that it placed on US financial institutions by forcing the Treasury Department to name what it considers "illegal Internet gambling." The second also sought to delay industry compliance with UIGEA regulations. In May 2009, Rep. Frank again proposed two pieces of legislation, one aimed at establishing a federal regulatory and enforcement framework under which Internet gambling operators could obtain

licenses authorizing them to accept bets and wagers from individuals in the United States,¹² and one calling for a one-year delay in the date for compliance with five regulations pursuant to UIGEA.¹³ In addition, the Interactive Media Entertainment and Gaming Association (iMEGA) filed a federal lawsuit to declare UIGEA unconstitutional based on vagueness. iMEGA lost that lawsuit at both the district court and Third Circuit Court, but its suit reflects the vigorous battle over Internet gambling.¹⁴

Finally, there have been a number of attacks on US eGaming by member countries in the World Trade Organization (WTO), which contend that the United States is violating its WTO commitments by shutting foreign gambling operators out of the US market.¹⁵ In 2003, in a particularly contentious dispute, the small island country of Antigua, which permits Internet gambling and which hosts a number of offshore Internet gaming companies, complained to the WTO that the United States had breached its agreements under the General Agreement on Trade in Services (GATS). Antigua claimed that the US prevented the cross-border supply of online gambling services from WTO members to the US market.

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Following a failed appeal, the WTO Appellate Body found that a number of US statutes were inconsistent with the GATS commitments and that the Interstate Horseracing Act discriminated against foreigners in breach of the US GATS commitments.

In 2006, Antigua again complained to the WTO that the United States failed to take any action in response to the earlier ruling and that UIGEA, which was passed after the initial action concluded, violated the GATS as well. The Dispute Settlement Body of the WTO found that the United States had not complied with the previous rulings and in 2007 found that Antigua could impose trade sanctions against the United States by suspending intellectual property rights protected by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). On April 4, 2007, the United States announced its intention to withdraw its commitments with respect to gambling services as provided for by the GATS and has subsequently negotiated compensation to various WTO members, as required by the GATS provisions.¹⁶

Digital Gambling

At the state level, a number of states have statutes outlawing Internet gambling in any form. Some states have gone so far as to attempt more proactive attacks against online gambling. For example, the Commonwealth of Kentucky in September 2008 filed an action against a host of online gambling sites. The Kentucky government seized 141 gambling-site URLs and demanded that their domain name owners block Kentucky residents from using Web sites operated at them. The seizure order was granted, and the case is still pending following a number of disputes over standing by both iMEGA and the Interactive Gaming Council (IGC), which sought to contest the suit on behalf of the domain name owners.¹⁷ The public rationale behind this seizure was the same as has been offered in support of UIGEA—that there are detrimental social ramifications of gambling that should not be encouraged. Whether this is true or whether it is more a desire to keep American money in the US and, particularly with respect to Kentucky, to protect the state's own brick-and-mortar casinos and horseracing operations is open to debate.

Meanwhile, other states have moved away from enforcement actions against gaming operators. Leaders in some states have even advanced propositions to have poker delineated as a game of skill in order to take it out of the ambit of UIGEA or other Internet gambling laws.

The Next Click in Digital Pay-for-Play Gaming

Given this dicey legal landscape, there are significant—though not necessarily insurmountable—risks for game developers and distributors looking to cash in on public interest in winning money and prizes from their digital entertainment.

At first, land-based casino companies (such as Harrah's and MGM Resorts) were leery of Internet gambling, viewing it as a significant competitor. But seeing the revenue opportunities and to prepare for a day when Internet gaming may be regulated in the United States, casino businesses have begun hiring former executives from foreign online gambling operators.

Meanwhile, some US-based firms have been trying to find game applications to take advantage of consumers' obvious interest in winning prizes or money online, while staying clear of potential government liability. In one of the more rudimentary forms, there are already numerous text-to-win sweepstakes conducted to promote TV shows. By definition, sweepstakes are won by chance. They have triggered lawsuits about whether the sweepstakes properly obtain consent before sending premium SMS messages to players and, more critically,

whether the sweepstakes violate state gambling laws. In 2008, the Georgia Supreme Court ruled that a text-to-win sweepstakes for the *Deal or No Deal* game show did not violate state gambling laws. The sweepstakes allowed consumers to enter with a text message from their mobile phone subject to a 99 cent charge. Class action lawsuits have also been filed against wireless carriers that enable such sweepstakes. While this is not as direct as requiring players to wager for a game, it is an example of how entertainment companies and telecommunications carriers are looking to digital games of chance or skill.

A more sophisticated trend is an emerging desire by companies to create pay-to-play versions of applications classified as games of skill. This is designed to avoid creating the impression of an illegal lottery or gambling because they are not games of chance. For example, Virgin Group recently got into the Internet videogame tournament business, which is legal in all but 11 US states because the videogames are considered games of skill, not chance.¹⁸ The Virgin Gaming Web site allows console videogame players the chance to win large cash prizes for beating others at well-known videogames.¹⁹ Players on Virgin Group's Web site wager sums, described as "transactions" and "challenges," against one another and not the house.²⁰ The companies make money by taking service fees, a percentage of winnings off the top.²¹

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More companies are interested in creating pay-to-play or wagering versions of casual games playable on Facebook and other social media platforms. It is not far-fetched to envision players betting to win money playing online Scrabble or casual games like Farmville. Or what if lotto, keno, and other lottery-type number-selection games (even state-sanctioned lottos and scratch-off games) could be played via computer or smartphone?

As for card games, the potential is enormous. Casual game powerhouse Zynga already has a slate of card games, including Zynga Poker and blackjack, which are played for free. The Zynga "Texas HoldEm Poker" fan page on Facebook has more than 4.3 million fans who "Like" the page and reports more than 36 million monthly active users. It boasts that "Zynga Poker is the #1 poker game in the world." Imagine if one day casual

game companies could take wagers from players on such online poker and card games. Add in slot machine and other casino games, and the revenue possibilities grow exponentially.

The potential market would be easier to navigate if there were clear legislative or judicial findings about what constitutes the line between a game of skill and a game of chance. Traditionally, roulette, keno, and other similar games have been viewed as games of chance. Console videogames have been viewed as games of skill. Card games, such as poker and blackjack, have been the subject of much debate as to the level of skill versus chance involved, with there being some limited efforts to legalize online poker as a game of skill.²²

Given the current regulatory US environment, companies are reluctant to publicly announce any plans to operate online or mobile games of skill or chance that are pay-to-play. But it would be surprising not to see at least some efforts by major businesses to monetize such digital games.

Without change in the current (albeit sometimes ambiguous) state of US law, it is not likely that digital roulette, keno, or other strict pay-to-play games of chance will be widely offered to US consumers (except on sites that unabashedly embrace Internet gambling). The law is clear that games of chance offered for consideration are illegal lotteries and are prohibited. Game developers thus have two options: remove consideration or eliminate the element of chance. Removing consideration is easy by offering a truly “free” and “accessible” AMOE. But having an AMOE of course means that game operators cannot generate revenue by taking players’ money, which can undermine, if not entirely defeat, the business case.

Thus, if a game developer or distributor wants to leap into this space, focusing on games of skill (which eliminate the element of chance) will be critical to creating applications that can earn revenue and also withstand scrutiny at least when an underlying state statute does not prohibit even these types of games. Strict rules must be in place to ensure that only those participants from states where the laws allow gambling on games of skill are permitted. Whether that is enough to shield participants from government and civil legal action will be the multimillion dollar question.

Other Legal Issues Raised by Digital Games of Skill and Chance

If developers and operators can structure their digital games to navigate the tricky regulatory waters on Internet gambling, sweepstakes, and contests, they will need to be prepared for a variety of other legal issues.

First of course are intellectual property matters. Patent protection and conflicts will need to be evaluated as developers race to develop innovative gaming applications and systems, which may merit utility or business method patents. The Internet gambling industry is already the target of many patent troll lawsuits alleging infringement of patents covering digital media, customer support, and other inventions. Expect such litigation to grow as more kinds of digital games come into cyber-world.

IP issues will also center on rights in and to valuable domain names. There will be and already is a race to register domain names that make sense to host future gaming sites.

Particularly valuable will be domain names for common card, casino, and game terms. In 2010, the domain name *www.slots.com* traded hands for \$5.5 million. Online gaming organizations are beginning to snap up such domain names in anticipation of either offering one of the safer alternatives or in the event that Internet pay-to-play gambling eventually opens up in the United States. Such value will undoubtedly bring out typo-squatters who seek to register similar misspelled domain names in an attempt to leverage their position once the market opens up. Given the potential profits that can be made through these sites, the race for registration and ownership of these domains promises to be fierce. Expect to see a robust trading market for the most valuable domain names, battles over the trademark protectability of generic game terms in Internet URLs, as well as UDRP and cybersquatting actions against typosquatters.

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Second, because IP is being developed, licensing issues will emerge. As game developers create software and applications for operators and distributors to use, they of course will seek to obtain appropriate license arrangements. This new world of digital gaming will require the same provisions expected in a traditional game license, but the licenses required will also raise more unique issues. For example, there will likely be innovative revenue splits from any pay-to-play component. Given today’s regulatory environment, a license may have to acknowledge uncertainty inherent with some of the approaches being taken. That may lead to negotiation over who is responsible for compliance with regulatory requirements and copious attention to the scope of indemnity protection.

Third, digital game providers will confront territorial jurisdiction issues with the courts. Because this universe of games will be available over the Internet and on mobile devices, game developers, distributors and operators will risk subjecting themselves to jurisdiction in numerous places. For foreign organizations, that means probably subjecting themselves to US jurisdiction. And for all companies, it means potentially exposing themselves to the arm of all US states where they promote their games and accept players. Some US courts have applied jurisdictional rules broadly to find Internet companies subject to jurisdiction wherever a state's resident was able to access the Web site. Whether this will continue to be the rule, or whether there will be different rules applied for mobile devices, will further unfold in the future and will be of keen interest to foreign firms who want to play in the US digital game space.

Finally, companies involved in Internet and mobile gaming are facing growing privacy issues resulting from the collection and use of consumer data. One of the lures for providing free games, especially those played over social networking sites, is the ability to gather user data for subsequent marketing purposes. But consumers, their protection groups, and (more poignantly) plaintiffs' lawyers are increasingly scrutinizing what Web businesses are doing with their user data.

In 2010, a number of class action lawsuits were filed against Zynga, the leading developer of online casual games, and Facebook, which hosts Zynga games, such as the popular Farmville. The complaints contend (among other things) that Zynga's applications violate federal and state privacy laws by sending advertisers and Internet tracking companies Facebook user ID numbers of game players. Those user IDs can be used to look up players' names and potentially other personal information. Other lawsuits have been filed against operators and marketers for culling consumers' search history data for use in online behavioral advertising. Such activities have been subject to a spate of recent litigation that may eventually spill further into the gaming arena.

In particular, mobile games that can track users' locations, like FourSquare and Gowalla, raise even more sensitive questions about who has legal obligations to protect the privacy of an individual's location, even after they have "checked-in" somewhere for friends in their network to see.²³ Applicable privacy laws can be complicated and require detailed evaluation, but one piece of advice should always be taken: Make sure that a game's terms of use clearly disclose what personal data will be collected, to whom it may be given, and how it will be used.

The Gaming Future

If it seems like there are many legal risks associated with offering pay-for-play digital gaming, there are. But even with uncertainty, the lure of a huge new revenue market is enticing many companies to at least investigate how they can enter this playground. To do so, they will need to closely study lottery, sweepstakes, and contest laws; regularly monitor developments in online gambling regulation; track gaming trends in the marketplace; and keep their eye on IP, licensing, privacy, and other legal issues.

As the landscape of online and mobile entertainment continues to evolve, it would be hardly surprising to soon see games of skill—and perhaps even games of chance—fill our hunger for digital fun. Soon, Facebook friends may be touting not just their crop harvest on Farmville or record totals on Bejeweled Blitz. They may be raving about how much money they just clicked to win.

Notes

1. See *Pepsi Cola Bottling Co. of Luverne, Inc. v. Coca-Cola Bottling Co.*, 534 So. 2d 295, 297 (Ala. 1988) (explaining that where a promoter expects to gain increased sales due to a sweepstakes, this benefit is not a consideration if consumers are not obligated to make a purchase to participate.), but compare *Featherstone v. Independent Service Stations Assn.*, 10 S.W.2d 124, 125-127 (Tex. Civ. App. 1928) (inducement of patronage is consideration and AMOE is insufficient).
2. There is a very good discussion of the various laws relating to online gambling available in the treatise authored by Ian C. Ballon. See 3 IAN C. BALLON ET AL., *E-COMMERCE & INTERNET LAW*, Chapter 30 (Thomson Reuters/West 2d ed. 2009) (hereinafter BALLON).
3. *Id.* at 30-3. Furthermore, according to the American Gaming Association, Illinois, Indiana, Louisiana, Massachusetts, Nevada, Oregon, South Dakota, and Utah currently have in place laws expressly banning Internet gambling within their borders. Additionally, attorneys general in Florida, Kansas, Minnesota, Oklahoma, and Texas have issued opinions that Internet gambling is illegal in their states. See Internet Gambling Fact Sheet, available at http://www.americangaming.org/Industry/factsheets/issues_detail.cfm?id=17. Of course, before advising your clients on these issues, it is recommended that one undertake the necessary research to determine which states have statutes banning Internet gambling.
4. "For 2004, estimates of online gambling revenues ranged from \$7 billion to \$10 billion, with U.S. bettors providing at least half of that amount—\$4 billion or more." See David O. Stewart, "An Analysis of Internet Gambling and Its Policy Implications," American Gaming Association, 10th Anniversary White Paper Series, at 2, available at http://www.americangaming.org/assets/files/studies/wpaper_internet_0531.pdf. Revenue has

- likely grown globally since then, though how much the US market now contributes is less certain.
5. See *State v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715 (Minn. Ct. App. 1997), *aff'd*, 576 N.W.2d 747 (Minn. 1998). In *State v. Granite Gate Resorts, Inc.*, suit was brought against a Nevada corporation and its president for promoting the WagerNet site on the <http://www.vegas.com> Web site, which provides tourist information about Nevada. WagerNet was an online wagering service planned to be available internationally in fall 1995. Its Web pages enabled Internet users to subscribe for more information about the service. The Minnesota attorney general brought suit, alleging that defendants had engaged in deceptive trade practices, false advertising, and consumer fraud by advertising in Minnesota that gambling on the Internet is lawful. The company and its president sought dismissal of the case on jurisdictional grounds but lost that battle before the district court. The court of appeal affirmed the district court's finding that the defendants' Internet activities subjected them to personal jurisdiction in Minnesota.
 6. 18 U.S.C. § 1084.
 7. In fact, one recent federal appellate opinion has expressly limited its reach to sports betting. See *In re MasterCard International, Inc.*, 313 F.3d 257, 262-263 (5th Cir. 2002).
 8. See Ballon, *supra* n.2, at 30-10, 11.
 9. 31 U.S.C. §§ 5361-5367.
 10. See H.R. 2046, 110th Cong. 2007-2008.
 11. See Payment Systems Protection Act of 2008, H.R. 6870, 110th Cong. (2007-2008).
 12. See The Internet Gambling Regulation, Consumer Protection, and Enforcement Act of 2009, H.R. 2267 111th Cong. (2009-2010).
 13. See Reasonable Prudence in Regulation Act of 2009, H.R. 2266, 111th Cong. (2009-2010).
 14. See *Interactive Media Entertainment and Gaming Association Inc. v. Attorney General of the United States*, 580 F.3d 113 (3d Cir. 2009).
 15. See Examination Procedure Concerning an Obstacle to Trade, Within the Meaning of Council Regulation Consisting of Measures Adopted by The United States of America Affecting Trade in Remote Gambling Services, EC No. 3286/94 (June 10, 2009).
 16. Other federal statutes have been used to attack gambling in general and at times Internet gambling. The Travel Act, 18 U.S.C. § 1952 (2011), provides criminal penalties, including imprisonment and fines for those that travel in interstate or foreign commerce or use the mail or any facility in interstate or foreign commerce with the intent to "distribute proceeds of an unlawful activity" or "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of an unlawful activity." The Travel Act, unlike the Wire Act, is not limited to bets or wagers on a "sporting event or contest," applying instead to "any business enterprise involving gambling . . . in violation of the laws of the State in which they are committed or the United States." 18 U.S.C. § 1952(b) (2011). The Paraphernalia Act, 18 U.S.C. § 1953 (2011), has been applied to online gambling where a party intentionally sent records of gambling activity from a foreign location (such as Antigua) to United States locations (see BALLON, *supra* n.2, at 30-10 to 30-11, citing *People ex rel. Vacco v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 863 (N.Y. Sup. Ct. 1999)) and to international lotteries in which tickets were sold online. See BALLON, *supra* n.2, at 30-11 (citing *United States v. Norberto*, 373 F. Supp. 2d 150 (E.D.N.Y. 2005)). The Organized Crime Control Act, 18 U.S.C. § 1955 (2011), is another federal statute potentially available for targeting online gambling, but it is predicated on a showing of a violation of a state law and was designed to apply only to "sophisticated, large-scale illegal gambling operations . . . thought to be a major source of income for organized crime." See BALLON, *supra* n.2, at 30-12 (citing *U.S. v. King*, 834 F.2d 109, 112 (6th Cir. 1987), *cert. denied*, 485 U.S. 1022 (1988)).
 17. See, e.g., *Commonwealth of Kentucky v. 141 Domain Names*, Case No. 08-CI-1409, pending in Franklin Circuit Court (opinion and order granting seizure entered Oct. 16, 2008).
 18. Taub, Eric A., "Virgin Group Takes Chance on Game Site," N.Y. TIMES, June 15, 2010, online edition, <http://www.nytimes.com/2010/06/15/technology/15game.html>.
 19. *Id.*
 20. *Id.*
 21. *Id.*
 22. See, e.g., Kelly, Joseph M., et al., "Poker and the Law: Is It a Game of Skill or Chance and Legally Does It Matter?," *GAMING LAW REVIEW*, Vol. 11, No. 3, 2007.
 23. See Renault, Jean-Luc, "Online, Mobile Game Growth Raises New Legal Issues," *DAILY JOURNAL*, Oct. 20, 2010, at 1.