

Down But Not Out: Working Around the U.S. Government's Crackdown

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WORD THAT INVESTMENT BANKS, which had underwritten initial public offerings for offshore online gaming sites, had been subpoenaed by the U.S. Department of Justice¹ left some wondering whether these actions, combined with the recent arrests of former directors of offshore electronic cash processor Neteller, would have a negative long-term impact for the online gaming industry.

"The federal government is doing what it can to scare away the money," observed Mitchell Stein, a partner in the Intellectual Property Group and Litigation Department in Sullivan & Worcester's New York City office.

The headline-grabbing enforcement actions of late don't seem to be the work of anti-gambling activists acting alone. "I think this is not renegade U.S. Attorneys," said Jack Blum, of counsel in the Washington D.C. office of Baker Hostetler LLP. "It has to be that it's coming out of Washington," observed Blum, a former U.S. Senate staff attorney. Given meager federal resources for prosecutions, "one has to believe that a big chunk of this is political," he said. "It generates press."

Indeed, last summer's arrest of BetOnSports CEO David Carruthers while on a layover in a Dallas airport was closely followed by the press. "The BetOnSports arrest sent a shockwave to the gaming industry," Stein said. The Carruthers detention was followed, not long after, by the arrest of another online gaming figure. In September, Sportingbet PLC's Peter Dicks² was detained in a U.S. airport.

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CURBED ENTHUSIASM

"In the short term, [these arrests] have had a deterrent effect," Stein said.

"We've represented several online sites doing the [public relations], and it has hit all of the sites really hard," said Susan Tellem, president and CEO of Tellem Worldwide, Inc. in Century City, Calif. "Bodog stopped giving bonuses, which indicates it is financially hurting although I understand that it did very well at first when everyone [else] was pulling out" of the U.S. market, observed Tellem, who said she has worked with Bodog.com and with wagerweb.com. "Most [online gambling sites] have turned their attention to the EU and Asia. Most have stopped giving bonuses and quite a few are struggling to keep U.S. players because players are having trouble transferring money into their accounts," Tellem continued.

Then, in January of this year, former Neteller directors John Lefebvre and Stephen Lawrence³ were arrested.⁴

"The noose tightened with the Neteller arrests," said Michael Clebник, chief operating

¹ Andrew Ross Sorkin & Stephanie Saul, *Gambling Subpoenas On Wall St.*, N.Y. TIMES, Jan. 22, 2007, at C6. Subpoenas were issued to Credit Suisse, Deutsche Bank, Dresdner Kleinwort, and HSBC. *Id.*

² Dicks is a former non-executive chairman of Sportingbet. Bennett Liebman, *Extraditing Peter Dicks*, 11 GAMING L. REV. 7, 7 (2007).

³ A copy of the complaint against Lawrence appears in this issue of *Gaming Law Review*. Complaint, United States v. Lawrence, No. 107-mj-00059-UA (S.D.N.Y. filed Jan. 12, 2007), available at 11 GAMING L. REV. 119 (2007).

⁴ Bruce Zagaris, *U.S. Arrests Two NETeller Founders*, 23 INT'L ENFORCEMENT L. REP. n.p. (Mar. 2007).

officer of the National League of Poker⁵ in Framingham, Mass. In January, Neteller announced it would no longer process gambling-related transactions from the U.S. market.⁶

Next came the news that investment banks that had underwritten the public offerings of online gambling sites had been targeted by the federal government. Before these recent enforcement efforts, there had been "an economic motivation to either get involved in online gambling as an operation or accept ads or other sources of revenue from online gambling operators as a potential client," said Benjamin Mulcahy, a partner in the Entertainment and Media Practice Group of Sheppard, Mullin, Richter & Hampton in the New York and in the Century City, Calif. offices. "Most U.S. businesses have put that economic motivation on hold out of a fear that they could be potentially liable," he said. Recent enforcement efforts "exacerbate that fear," Mulcahy explained. An investment banking house floating a stock issue for an online gaming company might be more reticent in the future to do so given that the risk might be too great, Blum said.

A FISHING EXPEDITION?

"I think the DOJ has overreached in enforcement attempts" by issuing subpoenas to investment banks, Mulcahy said. "This is a potentially troubling turn of events," he maintained. At the same time, though, "the fact that subpoenas have been sent does not mean by a long shot that prosecution is to follow," Stein said. The short-term message for these entities may have been "get out of the online gaming business." In the long term, though, "it's like trying to stop water from rolling downhill," Stein said.

Despite the passage last fall of the Unlawful Internet Gambling Enforcement Act,⁷ "I'm sure workarounds are in the works already," Stein said. "I expect that the industry will adjust to it and continue to thrive," he explained.

"Companies are becoming much more sophisticated in understanding what U.S. law actually prohibits," Mulcahy said. Opportunities remain for online gaming "to be structured in

a way that does comply with applicable law," he said.

VIABLE ALTERNATIVES

Enter the National League of Poker. The new law "allowed us to grow," Clebник said. "People stay online for extended periods" playing online poker, Clebник observed. "The popularity of poker is unprecedented," he said. As a result, there's an opportunity for advertisers and sponsors to present content in a different way other than pay for play, Clebник said. "The withdrawal of offshore sites like Party Poker from the U.S. market has left millions of Americans abandoned," he noted. The National League of Poker's site is "the leading legal alternative for online poker play," Clebник maintained. No deposit is required to play, but players can still win cash and other prizes thanks to advertisers and sponsors.

"Miller Brewing Co. and Milwaukee's Best Light [beer] have chosen our company to run an online promotion," Clebник noted. "We have over 70,000 registered users and we only launched in June [2006]," he said. "There are well over 300 people every day signing up for our site," Clebник reported.

"We do a fair amount of search engine marketing," Clebник said. "The amount of people doing searches on free poker has grown by over 45 percent" since October 2006, when the Unlawful Internet Gambling Enforcement Act became effective, Clebник said.

But pay to play might not be dead, either. "I predict at one point there will be legal Internet gambling," Blum said. "The only way it will happen is if people in the industry come

⁵ National League of Poker, <http://www.nlop.com> (last visited Mar. 9, 2007).

⁶ Lori Tripoli, *The Post-Unlawful Internet Gambling Enforcement Act Online-Gaming Surge?*, 11 GAMING L. REV. 18, 20 (2007). See also *Neteller sheds 250 jobs as it pulls out of US*, DAILY MAIL (London), Feb. 17, 2007, at 108; Robert Barr, *Neteller ceases handling U.S. transfers for online gambling merchants*, ASSOCIATED PRESS, Jan. 18, 2007.

⁷ Pub. L. No. 109-347 (codified at 31 U.S.C. §§ 5361-5367). For a discussion of the new law, see I. Nelson Rose, *Viewpoint: The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed*, 10 GAMING L. REV. 537-41 (2006).

together and work on it as a group," he continued.

On March 5, the Poker Players Alliance announced that it had recruited former Sen. Alfonse D'Amato, R-N.Y., as its chairman of the board. "We are thrilled to have Senator D'Amato take up our cause to promote and protect the game played by millions of Americans. His enthusiasm, tenacity and political astuteness will bolster the influence of the PPA and help earn poker a much deserved exemption from the recent online gaming law," said Poker Players Alliance President Michael Bolcerek in a prepared statement. According to the alliance, more

than 23 million Americans played poker online in 2006. The Poker Players Alliance plans to seek a legislative exemption for online poker.

"Prohibitions don't work, they only create unintended consequences. The American people know this and we are going to make sure Congress knows it too," said Sen. D'Amato in a prepared statement "We need common sense regulation of Internet poker. Prohibition will only drive the industry underground and strip away any protections for children and services for problem gamblers."

And, anyway, federal prosecutors "have so many better things to do," Blum said.